

03/28/06

Altino Properties, Inc.
Documents Produced to the
U.S. Environmental Protection Agency
On April 24, 2008
Pursuant to the 104(e) Request

Puget Sound Energy v. Alba General Insurance Company

Quendall Insurance Claim

USEPA SF



1354236

Washington Superior Courts

WA Superior - King

97-2-29050-3

Puget Sound Energy Inc VS Alba General Ins Co et al - Civil

This case was retrieved from the court on Tuesday, March 28, 2006

(b)(4) copyright



(b)(4) copyright



(b)(4) copyright



Copyright © 2006 LexisNexis CourtLink, Inc. All Rights Reserved.
THIS DATA IS FOR INFORMATIONAL PURPOSES ONLY

(b)(4) copyright



Copyright © 2006 LexisNexis CourtLink, Inc. All Rights Reserved.
THIS DATA IS FOR INFORMATIONAL PURPOSES ONLY

(b)(4) copyright



Copyright © 2006 LexisNexis CourtLink, Inc. All Rights Reserved.
THIS DATA IS FOR INFORMATIONAL PURPOSES ONLY

(b)(4) copyright



Copyright © 2006 LexisNexis CourtLink, Inc. All Rights Reserved.
THIS DATA IS FOR INFORMATIONAL PURPOSES ONLY

(b)(4) copyright



18

Copyright © 2006 LexisNexis CourtLink, Inc. All Rights Reserved.
THIS DATA IS FOR INFORMATIONAL PURPOSES ONLY

(b)(4) copyright



Copyright © 2006 LexisNexis CourtLink, Inc. All Rights Reserved.
THIS DATA IS FOR INFORMATIONAL PURPOSES ONLY

AltinoEPA 000008

(b)(4) copyright



Copyright © 2006 LexisNexis CourtLink, Inc. All Rights Reserved.
THIS DATA IS FOR INFORMATIONAL PURPOSES ONLY

(b)(4) copyright



12

Copyright © 2006 LexisNexis CourtLink, Inc. All Rights Reserved.
THIS DATA IS FOR INFORMATIONAL PURPOSES ONLY

(b)(4) copyright



Copyright © 2006 LexisNexis CourtLink, Inc. All Rights Reserved.
THIS DATA IS FOR INFORMATIONAL PURPOSES ONLY

(b)(4) copyright



Copyright © 2006 LexisNexis CourtLink, Inc. All Rights Reserved.
THIS DATA IS FOR INFORMATIONAL PURPOSES ONLY

(b)(4) copyright



Copyright © 2006 LexisNexis CourtLink, Inc. All Rights Reserved.
THIS DATA IS FOR INFORMATIONAL PURPOSES ONLY

(b)(4) copyright



Copyright © 2006 LexisNexis CourtLink, Inc. All Rights Reserved.
THIS DATA IS FOR INFORMATIONAL PURPOSES ONLY

(b)(4) copyright



Copyright © 2006 LexisNexis CourtLink, Inc. All Rights Reserved.
THIS DATA IS FOR INFORMATIONAL PURPOSES ONLY

(b)(4) copyright



Copyright © 2006 LexisNexis CourtLink, Inc. All Rights Reserved.
THIS DATA IS FOR INFORMATIONAL PURPOSES ONLY

(b)(4) copyright



Copyright © 2006 LexisNexis CourtLink, Inc. All Rights Reserved.
THIS DATA IS FOR INFORMATIONAL PURPOSES ONLY

(b)(4) copyright



Copyright © 2006 LexisNexis CourtLink, Inc. All Rights Reserved.
THIS DATA IS FOR INFORMATIONAL PURPOSES ONLY

(b)(4) copyright



Copyright © 2006 LexisNexis CourtLink, Inc. All Rights Reserved.
THIS DATA IS FOR INFORMATIONAL PURPOSES ONLY

(b)(4) copyright



Copyright © 2006 LexisNexis CourtLink, Inc. All Rights Reserved.
THIS DATA IS FOR INFORMATIONAL PURPOSES ONLY

(b)(4) copyright



Copyright © 2006 LexisNexis CourtLink, Inc. All Rights Reserved.
THIS DATA IS FOR INFORMATIONAL PURPOSES ONLY

2005 JAN 21 PM 2:42 THE HONORABLE STEVEN GONZALES
KING COUNTY
SUPERIOR COURT CLERK
SEATTLE, WA.

SUPERIOR COURT OF WASHINGTON FOR KING COUNTY

PUGET SOUND ENERGY, INC.,

Plaintiff,

v.

ALBA GENERAL INSURANCE
COMPANY, et al.,

Defendants.

NO. 97-2-29050-3 SEA

MOTION FOR ADMISSION OF
MICHELLE A. TRUELLE PRO
HAC VICE


Defendants Certain Underwriters at Lloyd's, London and Certain London Market Insurance Companies respectfully move the court for an Order of Admission Pro Hac Vice for Michelle A. Trudelle.

This motion is brought pursuant to APR 8(b) and is based upon the attached Application for Admission Pro Hac Vice of Michelle A. Trudelle the accompanying Consent of Local Designated Counsel for Admission of Michelle A. Trudelle Pro Hac Vice.

DATED this 21st day of January, 2005.

LANE POWELL PC

By


Linda B. Clapham, WSBA No. 16735
Cathy A. Spicer, WSBA No. 15416
Attorneys for Defendants Certain
Underwriters at Lloyds, London and
London Market Companies

MOTION FOR ADMISSION PRO HAC VICE - 1
051425.0004/1168094.1

LANE POWELL PC
SUITE 4100
1420 FIFTH AVENUE
SEATTLE, WA 98101
(206) 223-7000

AltinoEPA 000022

1 DATED this 21st day of January, 2005.

2 LANE POWELL PC

3
4 By 

Linda B. Clapham, WSBA No. 16735

5 Cathy A. Spicer, WSBA No. 15416

6 Attorneys for Defendants Certain Underwriters at
7 Lloyd's, London and Certain London Market Insurance
8 Companies
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

CONSENT OF LOCAL DESIGNATED COUNSEL FOR
ADMISSION PRO HAC VICE - 2

051425.0004/1168080.1

LANE POWELL PC
SUITE 4100
1420 FIFTH AVENUE
SEATTLE, WA 98101
(206) 223-7000

AltinoEPA 000023

SUPERIOR COURT OF WASHINGTON IN KING COUNTY

PUGET SOUND ENERGY, INC.,

Plaintiff,

v.

ALBA GENERAL INSURANCE COMPANY,
et al.,

Defendants.

NO. 97-2-29050-3 SEA

CONSENT OF LOCAL DESIGNATED
COUNSEL FOR ADMISSION OF
MICHELLE A. TRUELLE PRO HAC
VICE

I, Linda B. Clapham, an active member in good standing of the Washington State Bar Association, having an office located at 1420 Fifth Avenue, Suite 4100, Seattle, Washington 98101, telephone number (206) 223-7000, do hereby consent to the admission Pro Hac Vice of applicant Michelle A. Trudelle as attorney for defendants Certain Underwriters at Lloyd's, London and Certain London Market Insurance Companies herein. I acknowledge that my office, Lane Powell PC (formerly known as Lane Powell Spears Lubersky), entered an appearance as attorneys of record for said defendants, that I shall be responsible for the conduct of this proceeding, and that unless allowed otherwise by this court, I or an attorney in my office will be present at all court proceedings at which Michelle A. Trudelle may appear.

CONSENT OF LOCAL DESIGNATED COUNSEL FOR
ADMISSION PRO HAC VICE - 1

051425.0004/1168080.1

LANE POWELL PC
SUITE 4100
1420 FIFTH AVENUE
SEATTLE, WA 98101
(206) 223-7000

1 **WILSON, SMITH, COCHRAN &**
2 **DICKERSON**

SUMMIT LAW GROUP

3
4 By David M. Jacobi, WSBA # 13524

By Donald S. Kunze, WSBA #16615

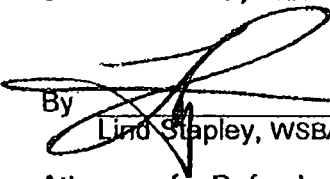
5 Attorneys for United States Fire
6 Insurance Company

Attorneys for Defendants the Travelers
Indemnity Company; Travelers Casualty
and Surety Company

7 **LANE POWELL SPEARS LUBERSKY**

SOHA & LANG, P.S.

8
9 By Linda Clapham, WSBA #16735

By  Lind Stapley, WSBA #19512

10
11 Attorneys for Defendants London
12 Market Insurers

Attorneys for Defendants Pacific
Employers Insurance Company,
Century Indemnity Company

13
14
15
16
17
18
19
20
21
22
23
24
25
26
STIPULATED MOTION TO VOLUNTARILY DISMISS QUENDALL
TERMINALS WITHOUT PREJUDICE AND FOR LEAVE TO FILE
FIRST AMENDED COMPLAINT - 4
291/405584.01
012105/1203/44901.00060

Riddell Williams P.S.
1001 FOURTH AVENUE PLAZA
SUITE 4500
SEATTLE, WA 98154-1085
(206) 624-3600

1 **WILSON, SMITH, COCHRAN &**
2 **DICKERSON**

3
4 By David M. Jacobi, WSBA # 13524

5 Attorneys for United States Fire
6 Insurance Company

7 **LANE POWELL SPEARS LUBERSKY**

8
9 By Linda Clapham, WSBA #16735

10 Attorneys for Defendants London
11 Market Insurers

SUMMIT LAW GROUP

By Donald S. Kunze, WSBA #16615

Attorneys for Defendants the Travelers
Indemnity Company; Travelers Casualty
and Surety Company

SOHA & LANG, P.S.

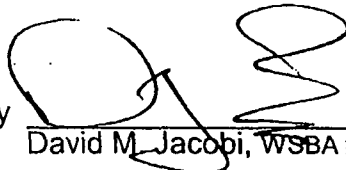
By Lind Stapley, WSBA #19512

Attorneys for Defendants Pacific
Employers Insurance Company,
Century Indemnity Company

12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
STIPULATED MOTION TO VOLUNTARILY DISMISS QUENDALL
TERMINALS WITHOUT PREJUDICE AND FOR LEAVE TO FILE
FIRST AMENDED COMPLAINT - 4
291/405584.01
012105/1203/44901.00060

Riddell Williams P.S.
1001 FOURTH AVENUE PLAZA
SUITE 4600
SEATTLE, WA 98154-1085
(208) 624-3600

1 **WILSON, SMITH, COCHRAN &**
2 **DICKERSON**

3 
4 By David M. Jacobi, WSBA # 13524

5 Attorneys for United States Fire
6 Insurance Company

7 **LANE POWELL SPEARS LUBERSKY**

8
9 By Linda Clapham, WSBA #16735

10 Attorneys for Defendants London
11 Market Insurers

SUMMIT LAW GROUP

By Donald S. Kunze, WSBA #16615

Attorneys for Defendants the Travelers
Indemnity Company; Travelers Casualty
and Surety Company

SOHA & LANG, P.S.

By Lind Stapley, WSBA #19512

Attorneys for Defendants Pacific
Employers Insurance Company,
Century Indemnity Company

12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
STIPULATED MOTION TO VOLUNTARILY DISMISS QUENDALL
TERMINALS WITHOUT PREJUDICE AND FOR LEAVE TO FILE
FIRST AMENDED COMPLAINT - 4

291/405584.01
020905/1358/44901.00060

Riddell Williams P.S.
1001 FOURTH AVENUE PLAZA
SUITE 4500
SEATTLE, WA 98154-1065
(206) 624-3600

AltinoEPA 000027

1 appearing to the Court that the Civil Rule 41(a) mandates the voluntary dismissal
2 of claims, and the Court been fully advised in the premises,

3 NOW, THEREFORE, IT IS HEREBY ORDERED, ADJUDGED AND
4 DECREED that the claim in the current Complaint concerning the Quendall
5 Terminals site is dismissed without prejudice and without costs to either party, and
6 leave is granted to PSE to file its First Amended Complaint in the form attached
7 hereto as Exhibit A.

8
9 DONE IN OPEN COURT this th 15 day of February, 2005.

10
11
12 
HONORABLE STEVEN C. GONZALEZ

13 Approved as to Form;
14 PRESENTED BY:

15 RIDDELL WILLIAMS P.S.

16
17 By 
David M. Brenner, WSBA #14278

18 GORDON MURRAY TILDEN
19 Charles C. Gordon, WSBA #1773
20 James R. Murray, WSBA #25263
Franklin D. Cordell, WSBA #26392

21 Attorneys for Plaintiff Puget Sound
22 Energy, Inc.
23
24
25
26

STIPULATED MOTION TO VOLUNTARILY DISMISS QUENDALL
TERMINALS WITHOUT PREJUDICE AND FOR LEAVE TO FILE
FIRST AMENDED COMPLAINT - 3
291/405584.01
021005/1603/44901.00060

Riddell Williams P.S.
1001 FOURTH AVENUE PLAZA
SUITE 4500
SEATTLE, WA 98154-1065
(206) 624-3600

1 DATED this _____ day of _____, 2005.

2 RIDDELL WILLIAMS P.S.

WILSON, SMITH, COCHRAN &
DICKERSON

3
4 By _____
5 David M. Brenner, WSBA #14278

By _____
David M. Jacobi, WSBA # 13524

6 GORDON MURRAY TILDEN
7 Charles C. Gordon, WSBA #1773
James R. Murray, WSBA #25263
Franklin D. Cordell, WSBA #26392

Attorneys for United States Fire
Insurance Company

8 Attorneys for Plaintiff Puget Sound
9 Energy, Inc.

10 SUMMIT LAW GROUP

LANE POWELL SPEARS LUBERSKY

11
12 By _____
Donald S. Kunze, WSBA #16615

By _____
Linda Clapham, WSBA #16735

13 Attorneys for Defendants the Travelers
14 Indemnity Company; Travelers Casualty
and Surety Company

Attorneys for Defendants London
Market Insurers

15 SOHA & LANG, P.S.

16
17 By _____
18 Lind Stapley, WSBA #19512

19 Attorneys for Defendants Pacific
20 Employers Insurance Company,
Century Indemnity Company

21 II. ORDER

22 THIS MATTER coming on regularly for hearing upon the foregoing
23 stipulation to voluntarily dismiss that portion of the Complaint pertaining to the
24 Quendall Terminals site and for leave to file a First Amended Complaint, it

25
26 STIPULATED MOTION TO VOLUNTARILY DISMISS QUENDALL
TERMINALS WITHOUT PREJUDICE AND FOR LEAVE TO FILE
FIRST AMENDED COMPLAINT - 2
291/405584.01
012105/1203/44901.00080

Riddell Williams P.S.
1001 FOURTH AVENUE PLAZA
SUITE 4500
SEATTLE, WA 98154-1065
(206) 824-3600

1 DATED this 24th day of January, 2005.

2 RIDDELL WILLIAMS P.S.

WILSON, SMITH, COCHRAN &
DICKERSON

3
4 By David M. Brenner, WSBA #14278

By David M. Jacobi, WSBA # 13524

5 GORDON MURRAY TILDEN

6 Charles C. Gordon, WSBA #1773

7 James R. Murray, WSBA #25263

Franklin D. Cordell, WSBA #26392

Attorneys for United States Fire
Insurance Company

8 Attorneys for Plaintiff Puget Sound
Energy, Inc.

9 SUMMIT LAW GROUP

LANE POWELL SPEARS LUBERSKY

10
11 By Donald S. Kunze, WSBA #16615

By Linda Clapham, WSBA #16735

13 Attorneys for Defendants the Travelers
Indemnity Company; Travelers Casualty
14 and Surety Company

Attorneys for Defendants London
Market Insurers

15 SOHA & LANG, P.S.

16
17 By Lind Stapley, WSBA #19512

18 Attorneys for Defendants Pacific
19 Employers Insurance Company,
Century Indemnity Company

20 II. ORDER

21 THIS MATTER coming on regularly for hearing upon the foregoing
22 stipulation to voluntarily dismiss that portion of the Complaint pertaining to the
23 Quendall Terminals site and for leave to file a First Amended Complaint, it
24

25
26 STIPULATED MOTION TO VOLUNTARILY DISMISS QUENDALL
TERMINALS WITHOUT PREJUDICE AND FOR LEAVE TO FILE
FIRST AMENDED COMPLAINT - 2
291/405584.01
012105/1203/44901.00060

Riddell Williams P.S.
1001 FOURTH AVENUE PLAZA
SUITE 4500
SEATTLE, WA 98164-1065
(206) 624-3800

1 DATED this 7th day of Feb, ~~2004~~ ²⁰⁰⁵.

2 RIDDELL WILLIAMS P.S.

WILSON, SMITH, COCHRAN &
DICKERSON

3
4 By David M. Brenner, WSBA #14278

By David M. Jacobi, WSBA # 13524

5 GORDON MURRAY TILDEN

6 Charles C. Gordon, WSBA #1773
7 James R. Murray, WSBA #25263
Franklin D. Cordell, WSBA #26392

Attorneys for United States Fire
Insurance Company

8 Attorneys for Plaintiff Puget Sound
9 Energy, Inc.

10 SUMMIT LAW GROUP

LANE POWELL SPEARS LUBERSKY

11
12 By Donald S. Kunze, WSBA #16615

By Linda Clapham, WSBA #16735

13 Attorneys for Defendants the Travelers
14 Indemnity Company; Travelers Casualty
and Surety Company

Attorneys for Defendants London
Market Insurers

15 SOHA & LANG, P.S.

16
17 By Lind Stapley, WSBA #19512

18 Attorneys for Defendants Pacific
19 Employers Insurance Company,
Century Indemnity Company

20 II. ORDER

21 THIS MATTER coming on regularly for hearing upon the foregoing
22 stipulation to voluntarily dismiss that portion of the Complaint pertaining to the
23 Quendall Terminals site and for leave to file a First Amended Complaint, it
24

25
26 STIPULATED MOTION TO VOLUNTARILY DISMISS QUENDALL
TERMINALS WITHOUT PREJUDICE AND FOR LEAVE TO FILE
FIRST AMENDED COMPLAINT - 2

291/405584.01
020905/1358/44901.00060

Riddell Williams P.S.
1001 FOURTH AVENUE PLAZA
SUITE 4500
SEATTLE, WA 98154-1065
(206) 624-3600

HONORABLE STEVEN C. GONZALEZ

FILED

KING COUNTY WASHINGTON

FEB 15 2005

EILEEN L. McLEOD
SUPERIOR COURT CLERK

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF KING

PUGET SOUND ENERGY, INC.,

Plaintiff,

v.

ALBA GENERAL INSURANCE
COMPANY, et al.,

Defendants.

NO. 97-2-29050-3 SEA

**STIPULATED MOTION TO
VOLUNTARILY DISMISS
QUENDALL TERMINALS
WITHOUT PREJUDICE AND FOR
LEAVE TO FILE FIRST AMENDED
COMPLAINT**

CLERK'S ACTION REQUIRED

I. STIPULATION

The undersigned parties, consisting of Plaintiff Puget Sound Energy, Inc. and all Defendants in the action, by and through their counsel of record, ("the Parties") hereby stipulate and agree that Plaintiff's claim against Defendants with regard to the Quendall Terminals site is hereby dismissed without prejudice and without costs pursuant to Civil Rule 41(a). The Parties further stipulate to the filing by Puget Sound Energy, Inc. ("PSE") of the First Amended Complaint attached hereto as Exhibit A, adding a claim with respect to the Fifth & Jackson site, reasserting a claim with regard to Lake Union, and making further changes to reflect developments with insurers since the filing of the original complaint.

STIPULATED MOTION TO VOLUNTARILY DISMISS QUENDALL
TERMINALS WITHOUT PREJUDICE AND FOR LEAVE TO FILE
FIRST AMENDED COMPLAINT - 1

291/405584.01
021005/1603/44901.00060

ORIGINAL

Riddell Williams P.S.
1001 FOURTH AVENUE PLAZA
SUITE 4500
SEATTLE, WA 98154-1065
(206) 624-3600



AltinoEPA 000032

FILED
99 OCT 19 AM 9:33
SUPERIOR COURT CLERK
SEATTLE, WA.

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF KING

PUGET SOUND ENERGY, INC.,

Plaintiff,

v.

ALBA GENERAL INSURANCE COMPANY,
et al.,

Defendant.

No. 97-2-29050-3SEA

CIVIL RULE 54(b) FINDINGS OF
FACT REGARDING ORDERS
GRANTING SUMMARY JUDGMENT

(PROPOSED)

Pursuant to Civil Rule 54(b), the Court enters the following Findings of Fact with respect
to the motions for summary judgment heard on June 4, 1999:

1. The Complaint

On November 18, 1997, Puget Sound Energy, Inc. ("PSE") filed its Complaint for
Declaratory Relief and Money Damages against the defendants. The Complaint contains claims
for insurance coverage with respect to six underlying liabilities:

- * A manufactured gas plant in Chehalis, Washington (the "Chehalis Site");
- * A manufactured gas plant in Everett, Washington (the "Everett Site");
- * Property adjacent to A Street in Tacoma, where a manufactured gas plant once operated (the "A Street Site");

CR 54(b) FINDINGS OF FACT REGARDING ORDERS GRANTING
SUMMARY JUDGMENT - 1
F:\DOCS\43247\14\05215PLD.DOC

0984

225A
Davis Wright Tremaine LLP
LAW OFFICES
2600 Century Square - 1501 Fourth Avenue
Seattle, Washington 98101-1688
(206) 622-3150 - Fax: (206) 628-7699

AltinoEPA 000033

- * The Thea Foss Waterway adjacent to the A Street Site (the "Thea Foss Site");
- * A manufactured gas plant in Seattle, Washington operated at Gas Works Park, including alleged contamination of Lake Union (the "Gas Works Park Site"); and
- * A creosote facility operated by Republic Creosote in Renton, Washington (the "Quendall Terminals Site").

2. The Motions for Summary Judgment

On April 14, 1999, certain defendants moved for partial summary judgment as to the Everett, A Street, Gas Works Park and Chehalis sites. Eventually all defendants joined in the motions. Oral argument was conducted on June 4, 1999. The Court granted the motions. The Court subsequently denied PSE's motion for reconsideration. Certain defendants thereafter moved for summary judgment with respect to the Thea Foss Site.

3. The Orders

The Court entered three orders with respect to the motions for summary judgment, one with respect to the first-party insurance companies and two with respect to the comprehensive general liability insurers. The Order Dismissing First-Party Insurers was entered June 4, 1999. The Order on Motion for Partial Summary Judgment Re: Chehalis, Everett, A-Street and Gas Works Park Sites was entered June 22, 1999. Copies of the two orders are attached as Exhibits A and B, respectively. In summary, the two orders: (a) dismiss all claims against the first-party insurance companies with prejudice; (b) dismiss all claims against the CGL insurance companies with prejudice with respect to the Everett, Chehalis, and A Street sites and the first \$3.2 million spent in defense and remediation of the upland portion of the Gas Works Park Site. Other claims with respect to the Gas Works Park Site were dismissed without prejudice. On ~~August~~ ^{Sept 20}, 1999 the Court entered an Order Granting Motion for Summary Judgment Re: Thea Foss Site.

1 **4. Remaining Site in the Case**

2 The Quendall Terminals Site is the only site remaining in the case at this juncture. The
3 Quendall Terminals Site is a small site in the context of this litigation.

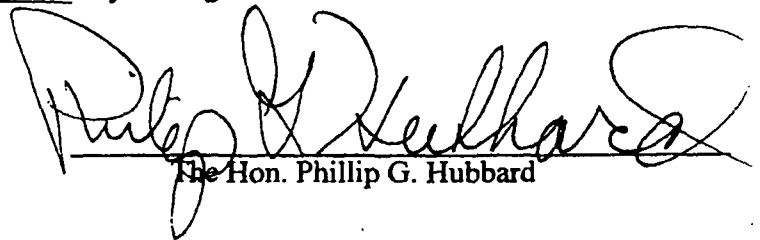
4 **5. Factors Justifying Immediate Appeal**

5 Efficient judicial administration justifies an immediate appeal. By dollar volume and
6 significance to the parties, the majority of this case has now been dismissed. It does not advance
7 the interests of either the court system or the litigants to pursue litigation in both the trial court
8 and the Court of Appeals at the same time. It would be most efficient to stay that portion of the
9 case remaining in the trial court to permit preparation and trial of all claims at once, in the event
10 all or any part of this Court's judgment be reversed in the Court of Appeals. Accordingly, I
11 specifically find as follows: (1) the significant majority of the claims at issue in this case have
12 been disposed of by the three Orders; (2) the questions to be reviewed on appeal are not still
13 before this Court for a determination or, to the extent they are, can readily be stayed; (3) there is
14 no chance that the need for review may be mooted by future developments in the trial court; (4)
15 an immediate appeal will not delay trial of unadjudicated claims to any significant extent, but
16 will confer a significant advantage on the parties in permitting the possible streamlining of future
17 litigation; (5) no factors argue in favor of delaying appeal for trial of the Quendall Terminals
18 Site; and (6) to the extent not covered by the foregoing, there is no just reason for delay. See
19 Schiffman v. Hanson Excavating Co., Inc., 82 Wn.2d 681, 513 P.2d 29 (1973); Doerflinger v.
20 New York Life Ins. Co., 88 Wn.2d 878, 567 P.2d 230 (1977).
21
22
23
24
25
26

6. Stay of Further Proceedings

Based upon the foregoing, further proceedings in the trial court with respect to the Quendall Terminals Site are stayed until further order of this Court.

DONE IN OPEN COURT this 15 day of ^{October}~~August~~ 1999.



The Hon. Phillip G. Hubbard

Davis Wright Tremaine LLP
Attorneys for Travelers Casualty and Surety
Company and The Travelers Indemnity Company

By _____
Thomas S. James, Jr., WSBA #11078

Dept: 6

Judge: PHILIP G. HUBBARD, JR.
Bailiff: FLORA RACELY

Date: 06/04/1999
Clerk: JAKKI KRIENER

Tape Set No: 331-99-092

Case No: 97-2-29050-3SEA

PLAINTIFF:
PUGET SOUND ENERGY

Counsel:
JEFFREY TILDEN; DAVID BRENNER AND JAMES MURRAY

DEFENDANT:
ALBA

Counsel:
LIND STAPLEY FOR CENTURY INDEMNITY; DONALD KUNZE FOR TRAVELERS AND TYNA EK FOR WESTPORT

Nature of Proceeding: CIVIL MOTION

Ln#	IDX	TIME	TAPE--TIME	LOG ENTRY
10	4	10:59:35	(01:42:20)	TAPE START! Recording begins... JUN 04, 1999
11	4	10:59:39	(01:42:24)	Court convenes
12	4	10:59:40	(01:42:25)	Respective counsel present
13	4	10:59:43	(01:42:28)	Certain Defendants motion for
14	4	10:59:43	(01:42:28)	Summary Judgment
15	5	12:35:17	(03:18:02)	Granted. Court sets forth which claims are dismissed with prejudice and which are dismissed without prejudice.
16	5	12:36:51	(03:19:36)	Order signed dismissing with prejudice 1st Party Insurers
17	6	12:39:07	(03:21:52)	Court is adjourned
18	6	12:39:08	(03:21:53)	TAPE STOP! Recording ends... JUN 04, 1999

CAUSE 97-2-29050-3 SEA

CAPTION Puget Sound Energy v Alba, et al

Evidentiary hearings, prior to trial date (motions in limine, 3.5, 3.6, DNA, competency, child hearsay).

_____ EVIHRG
PTM _____ hours (Pre-trial motion time)

Trial

_____ AFTRIAL
_____ NJTRIAL
_____ JTRIAL _____ \$JFA _____ Person _____ FFHRG _____ ADJHRG
_____ FFDHRG _____ ADSNHRG
PTM _____ hours (Pre-trial motion time)
VDT _____ hours (Voir Dire time)
APT _____ hours (Actual proceedings [trial] time)

Non-trial hearings, on trial date.

_____ GPOH - ANTRIAL
_____ GPSH - ANTRIAL
_____ MTHRG - ANTRIAL
_____ DSMHRG - ANTRIAL
_____ - ANTRIAL
PTM _____ hours (Pre-trial motion time)
VDT _____ hours (Voir Dire time)

Non-trial hearings, not on trial date.

_____ FNRHRG	_____ MTHRG	_____ CTPHRG	_____ ARRAIG
_____ SCVHRG	X SMJHRG	_____ DSPHRG	_____ DECHRG
_____ DSMHRG	_____ STAHRG	_____ GRDHRG	_____ DETHRG
_____ GPOH	_____ STLCON	_____ SCCHRG	_____ RVWHRG
_____ GPSH	_____ HCNTU	_____ SCUHRG	_____ RALJHRG
_____ SNTHRG	_____ TCNTU	_____	

1 Copy received, approved as to form,
2 notice of presentation waived:

3 GORDON MURRAY TILDEN
4

5 By
6 Charles C. Gordon, WSBA #01773
7 James R. Murray, WSBA #25263
8 Jeffrey I. Tilden, WSBA #12219
9 Of Attorneys for Plaintiff Puget Sound Energy, Inc.
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

ORDER DISMISSING FIRST-PARTY INSURERS - 4

L:\190\005\PLEAD\ITEP217

MERRICK, HOFSTEDT & LINDSEY, P.S.
ATTORNEYS AT LAW
710 NINTH AVENUE
SEATTLE, WASHINGTON 98104
(206) 682-0610

0717

1 4. Memorandum in Opposition to Certain Defendants' Motion for Partial Summary
2 Judgment as to Everett, A-Street, Gas Works Park and Chehalis Sites;

3 5. Declaration of Steven Secrist Regarding Justiciability, with attachments;

4 6. Certain First-Party Insurers' Summary Judgment Reply Brief;

5 7. Declaration of Authenticity;

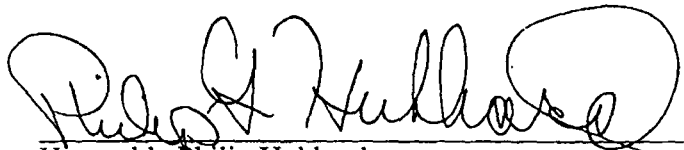
6 8. Certain Defendants' Reply to Puget Sound Energy's Memorandum in Opposition to
7 Certain Defendants' Motion for Partial Summary Judgment as to Everett, A-Street, Gas Works Park
8 and Chehalis Street Sites;

9 10. Tyna Ek's Declaration of Authenticity and attached exhibit;
10 and the Court being fully advised, now, therefore, it is hereby

11 ORDERED that all claims against the first party insurers, including those stemming from the
12 Everett Site, the Chehalis Site, and the "A" Street and 22nd Street Site in Tacoma are HEREBY
13 DISMISSED with prejudice.

14 Recognizing that the insurance coverage claims being dismissed by this order are unique to
15 the first-party insurer defendants, and finding no just reason for delay, this order is hereby designated
16 as a final order pursuant to CR 54(b).

17 DONE IN OPEN COURT this 4 day of June, 1999.

18 
19
20 Honorable Philip Hubbard

21 Presented by:

22 MERRICK, HOFSTEDT & LINDSEY, P.S.

23
24 By Tyna Ek
25 Tyna Ek, WSBA #14332
26 Of Attorneys for Defendant Westport Insurance Corporation

ORDER DISMISSING FIRST-PARTY INSURERS - 3

L:\190005\PLEAD\TEP217

0716

MERRICK, HOFSTEDT & LINDSEY, P.S.
ATTORNEYS AT LAW
710 NINTH AVENUE
SEATTLE, WASHINGTON 98104
(206) 682-0610

AltinoEPA 000040

1 REPUBLIC INSURANCE COMPANY;)
 2 PACIFIC EMPLOYERS INSURANCE)
 3 COMPANY; PACIFIC MUTUAL MARINE)
 4 OFFICE, INC.; RELIANCE FIRE AND)
 5 ACCIDENT INSURANCE CORPORATION;)
 6 RIVER THAMES INSURANCE COMPANY,)
 7 LIMITED; THE SEVEN PROVINCES)
 8 INSURANCE COMPANY, LIMITED; SPHERE)
 9 INSURANCE COMPANY, LIMITED; SWISS)
 10 NATIONAL INSURANCE COMPANY,)
 11 LIMITED; SWISS UNION GENERAL)
 12 INSURANCE COMPANY; THE TRAVELERS)
 13 INDEMNITY COMPANY; THE TRAVELERS)
 14 PROPERTY CASUALTY CORP. AS)
 15 SUCCESSOR-IN-INTEREST TO AETNA)
 16 CASUALTY AND SURETY CO.;)
 17 UNDERWRITERS AT LLOYD'S, LONDON;)
 18 UNITED STANDARD INSURANCE)
 19 COMPANY, LIMITED; UNITED STATES)
 20 FIRE INSURANCE COMPANY; VANGUARD)
 21 INSURANCE COMPANY, LIMITED;)
 22 WESTPORT INSURANCE CORP. AS)
 23 SUCCESSOR-IN-INTEREST TO)
 24 MANHATTAN FIRE AND MARINE)
 25 INSURANCE COMPANY; WORLD)
 26 AUXILIARY INSURANCE CORPORATION,)
 LIMITED; AND ZURICH AMERICAN)
 INSURANCE COMPANY OF ILLINOIS,)

Defendants.

THIS MATTER having come on before the undersigned Court, and the Court having considered the files and records herein and in particular the following:

1. Certain Defendants' Motion for Partial Summary Judgment as to Everett, A-Street, Gas Works Park and Chehalis Sites;
2. Joinder in Certain Defendants' Motion for Partial Summary Judgment as to Everett, A-Street, Gas Works Park and Chehalis Sites;
3. Joinder of Travelers Casualty and Surety Company As Successor to Aetna Casualty and Surety Company and of the Travelers Indemnity Company in Certain Defendants' Motion for Partial Summary Judgment as to Everett, A-Street, Gas Works Park and Chehalis Sites;

ORDER DISMISSING FIRST-PARTY INSURERS - 2

MERRICK, HOFSTEDT & LINDSEY, P.S.
 ATTORNEYS AT LAW
 710 NINTH AVENUE
 SEATTLE, WASHINGTON 98104
 (206) 682-0610

0715

SUPERIOR COURT CLERK
BY JAKKI KRIENER
DEPUTY

Honorable Philip Hubbard

IN THE SUPERIOR COURT OF WASHINGTON FOR KING COUNTY

PUGET SOUND ENERGY, INC.,

Plaintiff,

v.

NO. 97-2-29050-3 SEA

ORDER DISMISSING FIRST-PARTY
INSURERS

ALBA GENERAL INSURANCE COMPANY;
ANGLO-FRENCH INSURANCE COMPANY,
LIMITED; ANGLO-SAXON INSURANCE
ASSOCIATION, LIMITED; THE BALOISE
FIRE INSURANCE COMPANY, LIMITED;
BRITISH AVIATION INSURANCE
COMPANY, LIMITED; BRITISH NATIONAL
LIFE INSURANCE SOCIETY; CENTENNIAL
INSURANCE COMPANY; CENTURY
INDEMNITY AS SUCCESSOR-IN-INTEREST
TO INSURANCE COMPANY OF NORTH
AMERICA AND AS SUCCESSOR-IN-
INTEREST TO INDEMNITY INSURANCE
COMPANY OF NORTH AMERICA; CITY
GENERAL INSURANCE COMPANY;
CONTINENTAL CASUALTY COMPANY;
THE DOMINION INSURANCE COMPANY,
LIMITED; DRAKE INSURANCE COMPANY,
LIMITED; EDINBURGH INSURANCE
COMPANY, LIMITED; EMPLOYERS
INSURANCE COMPANY OF WAUSAU; THE
EXCESS INSURANCE COMPANY, LIMITED;
EXCESS INSURANCE COMPANY OF
AMERICA; FIDELIDADE INSURANCE
COMPANY OF LISBON; GIBBON (N.M.)
GROUP; THE HOME INSURANCE
COMPANY; IRON TRADES MUTUAL
INSURANCE COMPANY; LEXINGTON
INSURANCE COMPANY; LONDON AND
EDINBURGH INSURANCE COMPANY,
LIMITED; LONDON MARKET COMPANIES;
MINSTER INSURANCE COMPANY,
LIMITED; NATIONAL CASUALTY
COMPANY OF AMERICA; NORTH STAR
REINSURANCE COMPANY; OLD

ORDER DISMISSING FIRST-PARTY INSURERS - I

0714

MERRICK, HOFSTEDT & LINDSEY, P S
ATTORNEYS AT LAW
710 NINTH AVENUE
SEATTLE, WASHINGTON 98104
(206) 682-0610

I. \190\005\PLEAD\TEP217

ORIGINAL

AltinoEPA 000042

SUPERIOR COURT OF THE STATE OF
FOR KING COUNTY

FILED

1999 JUN -9 PM 3:49

KING COUNTY
SUPERIOR COURT CLERK
SEATTLE, WA.

Pltf/Pet, *Poget Sound*
vs. *Energy*

Def/Resp, *Alba Ins.*

No. *97-2-29050-3 SEA*

ORDER ON REASSIGNMENT
(Affidavit of Prejudice)

Clerks Action Required

An Affidavit of Prejudice and Order for Change of Judge
having been previously filed and granted, the Court on its own
motion, reassigns the above cause to another judge.

IT IS HEREBY ORDERED that this case is transferred from
Judge *Huggins* to Judge *Hubbard*.

Dated this *1st* day of *June*, 199*9*.

J. Kathleen Learned
JUDGE J. KATHLEEN LEARNED
Chief Civil Judge

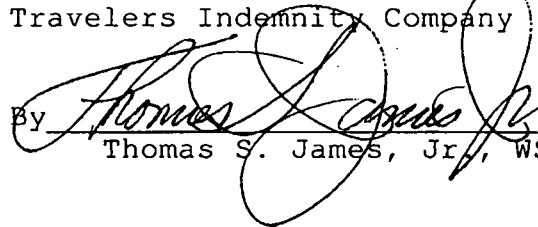
Summary Judgment with respect to the following sites as they are
denominated by PSE in this insurance coverage litigation:

Everett Upland
22nd & A Street
Gas Works Park Upland
Chehalis
Thea Foss Waterway.

DATED this 1st day of June, 1999.

DAVIS WRIGHT TREMAINE
Attorneys for Defendants The Travelers
Casualty and Surety Company and The
Travelers Indemnity Company

By



Thomas S. James, Jr., WSBA# 11078

DEF. TRAVELERS REPLY TO PUGET SOUND ENERGY'S
OPP. TO DEF.S' MOT FOR PART. SUM. JUDGMENT - 7

0660

Davis Wright Tremaine LLP
LAW OFFICES
2000 Century Square - 4501 Fourth Avenue
Seattle, Washington 98101-1688
(206) 422-3150 • Fax: (206) 426-7000

AltinoEPA 000044

FILED
1999 JUN -1 PM 5:11
KING COUNTY
SUPERIOR COURT CLERK
SEATTLE WA.

Honorable Phillip Hubbard
Hearing Date: 6/4/99
Hearing Time: 11:00 a.m.
Moving Parties: The Travelers Casualty and
Surety Company; The Travelers Indemnity Company
Trial Date: 4/10/00

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF KING

PUGET SOUND ENERGY, INC.,) NO. 97-2-29050-3 SEA
)
Plaintiff,) REPLY OF THE TRAVELERS
) CASUALTY AND SURETY COMPANY
v.) AS SUCCESSOR TO AETNA
) CASUALTY AND SURETY COMPANY
ALBA GENERAL INSURANCE COMPANY,) AND OF THE TRAVELERS
et al.,) INDEMNITY COMPANY TO
) PUGET SOUND ENERGY'S
Defendants.) OPPOSITION TO CERTAIN
) DEFENDANTS' MOTION FOR
) PARTIAL SUMMARY JUDGMENT
)
)

I. INTRODUCTION

Defendants The Travelers Casualty and Surety Company
(successor to Aetna Casualty and Surety Company) and The Travelers
Indemnity Company (together "The Travelers Defendants") have
joined in Certain Defendants' Reply to Puget Sound Energy's
Opposition to Certain Defendants' Motion For Partial Summary
Judgment As To Everett, A-Street, Gas Works Park And Chehalis
Sites.

THE TRAVELERS DEFENDANTS REPLY TO PUGET SOUND ENERGY'S
OPPOSITION TO DEFENDANTS' MOTION FOR PARTIAL SUMMARY JUDGMENT

0654

Davis Wright Tremaine LLP
LAW OFFICES
2000 Century Square - 1501 Fourth Avenue
Seattle, Washington 98101-1688
(206) 422-0150 Fax: (206) 422-0151

AltinoEPA 000045

The Travelers Defendants submit this additional reply to show that undisputed admissions by Puget Sound Energy in its Memorandum in Opposition also require dismissal of Puget Sound Energy's claim with respect to the Thea Foss Waterway Site in this coverage litigation (which is the sediments remedial action adjacent to the 22nd & A Street Upland Site) for the same reasons set forth in Certain Defendants Reply.

In its 1998 10-K Annual Report, issued March 17, 1999, PSE disclosed its liability at, among other sites, the "Tacoma 22nd and A St. Site." See Exhibit 4 to Declaration of Lind Stapley filed in connection with Certain Defendants' Motion for Partial Summary Judgment. It was clear to Travelers from the numbers contained in that disclosure that for SEC disclosure purposes PSE was using this designation to refer both to the upland 22nd & A Street site and to the adjacent Thea Foss Waterway site, as PSE has denominated those sites in this coverage litigation (PSE's liability at both sites arises out of the same manufactured gas plant that was located at 22nd & A Street). PSE's Memorandum in Opposition reveals that this assumption by Travelers was correct.

In its Memorandum in Opposition PSE clearly admits that the Thea Foss site, as denominated in this coverage action, was included in the amounts it disclosed in its 1998 10-K Annual Report. See PSE Memorandum in Opposition at 6 (chart setting forth "Past and Future Costs for SEC Disclosure as of 12/30/98" which includes an

DEF. TRAVELERS REPLY TO PUGET SOUND ENERGY'S
OPP. TO DEF.S' MOT FOR PART. SUM. JUDGMENT - 2

0655

Davis Wright Tremaine LLP
LAW OFFICES

2000 Century Square - 1501 Fourth Avenue
Seattle, Washington 98101-1088
(206) 622-3150 • Fax: (206) 628-7699

AltinoEPA 000046

entry for "Thea Foss Waterway"). Similarly, the Travelers
1 Defendants understood and intended when they joined Certain
2 Defendants' Motion for Partial Summary Judgment that it
3 encompassed the Thea Foss site, employing the terminology PSE
4 used in its 1998 10-K Annual Report. As this Reply reveals, all
5 the arguments regarding the other sites at issue in this Motion
6 and discussed in Certain Defendants' Reply apply equally to Thea
7 Foss, as that site is denominated by PSE in this coverage
8 lawsuit.
9

10 If the Court believes, however, that the scope of
11 Defendants' Motion does not formally encompass the Thea Foss
12 site, despite PSE's admissions in its own Memorandum in
13 Opposition regarding Thea Foss and its 1998 10-K disclosure, then
14 Travelers will gladly file a separate motion for Thea Foss based
15 on these exact same facts and arguments.

16 II. ARGUMENT

17 The relevant undisputed facts taken entirely from PSE's own
18 Memorandum in Opposition, **including those admitted by PSE**
19 **regarding the Thea Foss site**, are as follows:
20

- 21 * PSE has recovered approximately \$59 Million from its
22 insurance carriers and other third parties for past and
23 future environmental claims. See PSE's Memorandum in
24 Opposition at 6.
- 25 * Of this approximately \$59 Million, \$51,334,058 was
received from PSE's insurance carriers. See PSE
Memorandum in Opposition at 11. Hence, by simple
subtraction, approximately \$7,665,942 of the \$59

DEF. TRAVELERS REPLY TO PUGET SOUND ENERGY'S
OPP. TO DEF.S' MOT FOR PART. SUM. JUDGMENT - 3

0656

Davis Wright Tremaine LLP
LAW OFFICES

2000 Century Square - 1501 Fourth Avenue
Seattle, Washington 98101-1688
(206) 622-3150 • Fax: (206) 628-7699

AltinoEPA 000047

Million was received from sources other than PSE's insurance carriers.

* The total amount of PSE's recoveries allocable to the River Street site is as follows:

\$37,742,432 from PSE's insurance carriers (see PSE's Memorandum in Opposition at 12).

\$7,665,942 from other sources (see PSE's Memorandum in Opposition at 11 allocating all proceeds from non-insurance sources to the River Street site).

Thus, by simple addition, the total of the recoveries from all sources allocable to River Street is \$45,408,374. PSE has admitted that it is not entitled to allocate any additional insurance recoveries to the River Street site. See PSE Memorandum in Opposition at 13 ("Regardless of what future River Street costs are incurred, PSE will have no claim for insurance coverage against any settling insurance company with respect to these costs.")

* Thus, by simple subtraction, the total amount of the recoveries received by PSE to date from all sources allocable to the sites **other than River Street** that PSE says are disclosed in its 1998 10-K Report (i.e., Chehalis, Everett Upland, Gas Works Park Upland, 22nd & A Street Upland, Thea Foss Waterway and Mercer Street (PSE has not made Mercer Street part of this coverage action)) is:

\$59,000,000 total
<u>-\$45,408,374 for River Street</u>
\$13,591,626 for remaining sites

* The amounts of its past and future estimated liabilities for sites that PSE says composed its 1998 10-K disclosure are as follows:

22nd & A Street	\$1,105,426
Chehalis	\$2,000,000
Everett Uplands	\$3,250,000
Gas Works Park Uplands	\$3,200,000
Thea Foss Waterway	\$1,500,000
Mercer Street	\$ 100,000

(See PSE's Memorandum in Opposition at 6)

DEF. TRAVELERS REPLY TO PUGET SOUND ENERGY'S
OPP. TO DEF.S' MOT FOR PART. SUM. JUDGMENT - 4

0657

Davis Wright Tremaine LLP
LAW OFFICES

2600 Century Square - 4501 Fourth Avenue
Seattle, Washington 98101-1688
(206) 622-3150 - Fax: (206) 628-7699

AltinoEPA 000048

These amounts total \$11,155,426.

* Hence, by simple subtraction, the amounts that PSE has reported in its 1998 10-K Report as having received **for these sites** (other than River Street) in excess of its reported past and future liabilities **for these same sites** is \$2,436,200.

PSE, in its Memorandum in Opposition, is arguing that this court should credit *different* estimates for its liabilities at two of the sites in this coverage litigation: Gas Works Park Uplands (\$5,000,000 instead of the reported \$3,200,000 - a difference of \$1,800,000) and Thea Foss Waterway (\$3,500,000 instead of \$1,500,000 - a difference of \$2,000,000). For the reasons set forth in Certain Defendants Reply Brief, these higher estimates should not be credited by this Court.

Further, as its alleged basis for a higher estimate for the Thea Foss Waterway site, PSE recites "two new alternatives which EPA has asked the parties to explore." See PSE's Memorandum in Opposition at 9; Secrist Decl. at ¶¶ 19-20 and Exhibit H thereto.

What PSE fails to point out in its Memorandum in Opposition, however, is that these so-called "new alternatives" were considered in July of 1998 **five months prior to the end of the 1998 10-K Annual Reporting period**. See Exhibit H to Secrist Declaration. In other words, PSE was well aware of these potential alternatives in arriving at its \$1,500,000 estimate for the Thea Foss Waterway in its 1998 10-K Annual Report. PSE

DEF. TRAVELERS REPLY TO PUGET SOUND ENERGY'S
OPP. TO DEF.S' MOT FOR PART. SUM. JUDGMENT - 5

0658

Davis Wright Tremaine LLP
LAW OFFICES

2000 Century Square - 1501 Fourth Avenue
Seattle, Washington 98101-1688
(206) 622-3150 • Fax: (206) 628-7699

AltinoEPA 000049

should not be allowed to present to this Court a different figure
1 than its public admission in its 10-K Annual Report.

2 Finally, PSE has listed the amount of \$726,784 in "insurance
3 coverage legal costs other than River Street" as an amount that
4 was included in its "past and future costs for SEC disclosure as
5 of 12/30/98." See PSE Memorandum in Opposition at 6-7 (chart).
6 Presumably, this amount is based on PSE's assumption that it is
7 entitled to recover its attorneys fees and costs against the
8 insurance carriers in this case under *Olympic Steamship v.*
9 *Centennial Ins. Co.*, 117 Wn.2d 37, 811 P.2d 673 (1991). But
10 under *Olympic Steamship*, PSE may be entitled to recover its costs
11 only if its insurers compelled PSE to litigate to obtain benefits
12 of coverage under its policies to which PSE was otherwise due.
13 In this case, however, since for the Chehalis, Everett Upland,
14 Gas Works Park Upland, 22nd & A Street, and Thea Foss Waterway
15 sites PSE admits that it has already received funds **in excess of**
16 **its total past and future disclosed liabilities for these sites,**
17 PSE cannot possibly lay claim to *Olympic Steamship* fees for these
18 sites.
19
20

21 III. CONCLUSION

22 For all the reasons set forth above, in Certain Defendants'
23 Motion for Partial Summary Judgment, and in Certain Defendants'
24 Reply, this Court should grant Defendants Motion for Partial
25

DEF. TRAVELERS REPLY TO PUGET SOUND ENERGY'S
OPP. TO DEF.S' MOT FOR PART. SUM. JUDGMENT - 6

0659

Davis Wright Tremaine LLP
LAW OFFICES
2600 Century Square - 1501 Fourth Avenue
Seattle, Washington 98101-1688
(206) 622-3150 • Fax: (206) 622-7600

AltinoEPA 000050

the laws of the state of Washington that
on this day I have filed, mailed, served a copy
of this document to all parties of record.

Date: 6-10-99 @ Seattle, WA

Honorable Philip Hubbard

00-00000-1 PM 3:43

SUPERIOR COURT OF THE STATE OF WASHINGTON
FOR KING COUNTY

PUGET SOUND ENERGY, INC.,) NO. 97-2-29050-3SEA
)
Plaintiff,) CERTAIN DEFENDANTS' REPLY TO
) PUGET SOUND ENERGY'S MEMORANDUM
ALBA GENERAL INSURANCE) IN OPPOSITION TO CERTAIN
COMPANY; et al.) DEFENDANT'S MOTION FOR PARTIAL
Defendants.) SUMMARY JUDGMENT AS TO EVERETT,
A-STREET, GAS WORKS PARK AND
CHEHALIS STREET SITES

I. REPLY

The purpose of summary judgment is to avoid a useless trial. *Olympic Fish Prods., Inc. v. Lloyd*, 93 Wn.2d 596, 602, 611 P.2d 737 (1980). Defendants' Motion for Partial Summary Judgment fulfills this intended purpose on four specific sites and claims--Chehalis, Everett, A-Street and Gas Works Park. PSE's Opposition, on the other hand, attempts to obfuscate the issues by presenting facts and figures about sites not at issue in this motion, claims already litigated, and sites not at issue, to wit: River Street, Everett--Snohomish River, Gas Works Park--Lake Union, Quendall Terminals, Jackson Street, Mercer Street and "unknown sites." After sifting through the numbers and extraneous data, it nevertheless comes clear that trial would be useless on the following matters:

- (1) Defendants' alleged liability to pay past reimbursed PSE defense and indemnity costs for the Chehalis, Everett, A-Street and Gas Works Park sites.
- (2) Defendants' alleged liability to pay reimbursed future defense and indemnity costs at these same sites in the amounts disclosed to the SEC and to the State of Washington.
- (3) All claims against the first-party carriers.

0680

CERTAIN DEFENDANTS' REPLY TO PSE'S MEMORANDUM
IN OPPOSITION TO MOTION FOR PARTIAL SUMMARY JUDGMENT - I
pse/p-reply.ls

SOHA & LANG, P.S.
ATTORNEYS AT LAW
1210 NORTON BUILDING
801 SECOND AVENUE
SEATTLE, WASHINGTON 98104
(206) 624-1800/FAX (206) 624-3585

II. UNDISPUTED FACTS

All parties agree that PSE has received and allocated insurance proceeds that meet and/or exceed past and future costs at the Chehalis, Everett, A-Street and Gas Works Park sites. Indeed, the following material facts are not in dispute.

- PSE has recovered approximately \$59 million from insurance carriers and other third parties to pay for specific past and future environmental claims, including, but not limited to, claims at the Everett, Chehalis, Gas Works Park and A-Street sites.
- PSE has allocated these insurance recoveries to pay for all past environmental and legal costs at the Everett, Chehalis, Gas Works Park and A-Street sites.
- PSE has also allocated these insurance recoveries to pay for future environmental costs at the certain sites, including, but not limited to, the Everett, Chehalis, Gas Works Park and A-Street sites, in the following amounts disclosed to the SEC and the State of Washington:

A.	Chehalis	\$ 251,615.10
B.	Everett	\$2,271,253.66
C.	Gas Works Park	\$2,611,647.92
D.	A Street	\$ 440,909.31

See Stapley Supp. Decl., Exh. A.

These undisputed, material facts were recently disclosed by PSE to the Washington State Utilities and Transportation Commission in correspondence dated February 26, 1999. See Stapley Supp. Decl., Exh. A. A spreadsheet, entitled "Puget Sound Energy, Inc., Deferred Environmental Cost Summary, Gas - December 31, 1998" (mirrored in Secrist Decl. Exh. C), details the past and future costs allocated to each site, the total insurance recoveries received and applied to these costs, as well as a \$1,126,046.94 surplus.

1
2
3
4
5
6
7
8
9
0
1
2
3
4
5
6
7
8
9
0
1
2
3
4
5
6

PSE does not dispute the application of Washington’s public policy against “double recoveries” to its claims, nor does it dispute that it has already been paid its past and future costs for the Chehalis, Everett, A-Street and Gas Works Park sites. Accordingly, partial summary judgment dismissing these costs in the amounts disclosed to the SEC and the State of Washington is mandated.

There is no question that PSE's insurers have paid its past costs at the Chehalis, Everett, A-Street and Gas Works Park sites. Since there are no outstanding past damages at these sites, there is no outstanding coverage and no justiciable controversy. *Gossett v. Farmers Ins. Co.*, 133 Wn.2d 954, 968, 948 P.2d 1264 (1997). Summary judgment dismissing PSE's claims for past costs in the following amounts disclosed and characterized in PSE's "Deferred Environmental Cost Summary" is thus proper:

Remediation Costs	\$ 978,746.34
Legal Costs	<u>\$ 6,864.20</u>
Subtotal Everett	\$ 985,610.54

Remediation Costs	\$1,748,384.90
-------------------	----------------

GAS WORKS - SEATTLE

Remediation Costs	\$ 276,306.43
Legal Costs	\$ 588,352.08
Internal Costs - pre-1997	\$ 366.95
Subtotal Gas Works - Seattle	\$ 865,025.46

WSDOT FEDERAL/STATE

Legal costs	\$ 405,426.67
Remediation Costs	\$ -
SUB TOTAL	\$ 405,426.67

WSDOT UPLAND (Aka 22nd & A Street, Tacoma Gas Company Site)

Remediation costs	\$ 259,090.69
Legal costs	\$ 4,023.00
SUB TOTAL	\$ 263,113.69

Stapley Supp. Decl., Exh. A.

B. PSE's Citation to "Other Site" Data Does Not Create a Disputed Question of Material Fact or Justiciable Controversy.

Instead of addressing the sites named on the face of this motion, PSE refers to a slew of other sites and future contingencies with the apparent purpose of confusing the issues. For example, River Street (or "Tideflats") is discussed at length, even though the site has already been litigated and settled. PSE even admits: "Regardless of what future River Street Costs are incurred, PSE will have no claim for insurance coverage against any settling insurance company with respect to these costs." Opposition p. 13. PSE also discusses Quendall Terminals, Everett--Snohomish River, Gas Works Park--Lake Union, Jackson Street and Mercer Street and other "unknown sites," all of which are not the subject of this motion and/or are not in this lawsuit.

0683

CERTAIN DEFENDANTS' REPLY TO PSE'S MEMORANDUM
IN OPPOSITION TO MOTION FOR PARTIAL SUMMARY JUDGMENT - 4
pse/p-reply.ls

SOHA & LANG, P.S.
ATTORNEYS AT LAW
1210 NORTON BUILDING
801 SECOND AVENUE
SEATTLE, WASHINGTON 98104
(206) 624-1800/FAX (206) 624-3585

1 The fact that many of these sites are not included in this lawsuit reveals that even PSE recognizes
2 that these speculative liabilities are not ripe for determination in a declaratory judgment action.¹ After
3 weeding through this extraneous data, this motion returns to the simple, undisputed fact that PSE
4 received insurance proceeds and allocated those funds to stated past and future costs at the four sites at
5 issue. Summary judgment on these sites is thus proper.

6 **C. PSE's Future Cost Claims Against the First Party Carriers at the Chehalis, A-Street**
7 **and Everett Sites Require Dismissal.**

8 The crux of PSE's Opposition is that defendants use "the low end of PSE's range of estimates for
9 a number of sites[,]" and thus summary dismissal is not proper. Opposition, p. 16. The argument has
10 absolutely no application to the first party carriers and first party sites at issue, because there are no
11 "high estimates" that apply to these sites.²

12
13 First party insurance involves protection for losses to the policyholder's own property, whereas
14 third party insurance involves protection for liability the policy incurs to someone else. *Weyerhaeuser*
15 *Co. v. Aetna Cas. & Sur. Co.*, 123 Wn.2d 891, 909, 874 P.2d 142 (1994). Recognizing this, PSE has
16 only made claims against its first party carriers for alleged on-site contamination at the Everett Uplands,
17 Chehalis and A-Street sites. Other claims alleging off-site contamination are not at issue.

18
19
20
21 PSE admits that Jackson Street, Mercer Street and other "Unknown Sites" are not part of this action and thus not
22 ripe. Further, Everett--Snohomish River is not mentioned in PSE's Complaint nor in its response to discovery
23 requests concerning the Everett site. See PSE's Response to Interrogatory 9, attached as Exh. B to *Stapley Supp.*
24 *Decl.* Hence, defendants do not agree that the Everett--Snohomish River site is a part of this case. PSE's Gas
25 Works Park-Lake Union claims require the same treatment. PSE has alleged that the Lake Union claim arises from
26 WDOE's October 5, 1990 PLP letter. See *id.* That letter focuses only on "a cleanup of the contaminated soils and
groundwater beneath Gas Works Park," i.e. "upland site activities. See *Stapley Supp. Decl.*, Exh. C. Indeed,
according to PSE's own consultant, future potential liability and investigation of Lake Union Sediments will only
arise and be addressed, if at all, "under a separate decree or order." See Exh. F to *Secrist Decl.* Accordingly,
defendants do not agree that the Lake Union Sediments constitute a ripe claim.

² Please see Certain First-Party Insurers' Summary Judgment Reply Brief, which is incorporated into this section, for
a more extensive discussion of this issue.

PSE admits on page 6 of its Opposition that there is no difference in the past and anticipated future costs disclosed to the SEC and PSE's claimed potential damages for the first-party sites:

<u>Sites</u>	<u>SEC Past and Future Costs</u>	<u>High End Range</u>
Chehalis	2,000,000	2,000,000
Everett-Uplands	3,250,000	3,250,000
A Street	1,105,426	1,105,426 ³

There are no "high end" contingencies that have not been paid for by prior insurance recoveries. Since there are no unpaid past or future damages, there is not even an issue about coverage available for these sites under the first party policies. *Gossett*, 133 Wn.2d at 968. Summary judgment dismissing claims against the first party carriers is thus mandated. *Snokist v. Washington Ins.*, 83 Wn. App. 496, 501, 922 P.2d 821 (1996).

D. Summary Judgment Dismissing Claims Against the Third Party Carriers is Proper.

A similar analysis warrants dismissal of PSE's claims against the third party carriers for future costs at the Chehalis, Everett, A-Street and Gas Works Park sites in the amounts disclosed to the State and the SEC. Referring again to the table found on page 6 of PSE's Opposition, the SEC and PSE's alleged "high end" costs for past and future costs are as follows:

<u>Sites</u>	<u>SEC Past and Future Costs</u>	<u>High End Range</u>
Chehalis	2,000,000	2,000,000
Everett-Uplands	3,250,000	3,250,000
A Street	1,105,426	1,105,426
Gas Works Park--Upland	3,200,000	5,000,000

The only difference between the SEC numbers, which have already been paid, and the alleged "high end range" is at the Gas Works Park--Upland and WSDOT Thea Foss⁴ sites. Accordingly, there exist no

³ This amount includes approximately \$405,426.67 in "legal fees" which are not covered by the terms of the first-party policies. See Stapley Decl., Exh. A. First party policies do not pay for defense costs.

⁴ This site is addressed in the Reply of The Travelers Casualty and Surety Company.

1 disputed questions of material fact that would preclude dismissal of future cost claims at the Chehalis,
2 Everett and the A-Street sites in the amounts disclosed to the SEC. Gas Works Park is discussed below.

3 **1. PSE's "High End" Scenerio For Gas Works Park and Thea Foss Does Not**
4 **Present a Disputed Question of Material Fact or a Justiciable Controversy.**

5 PSE is estopped from using its "high end" number at Gas Works Park to defeat this motion. By
6 sealing its Oppostion ("For Attorney Eyes Only"), PSE whispers to the Court that there may be "unpaid
7 damages" at this site, while at the same time declaring, "Everything is paid!" to its investors, the SEC
8 and the State. Indeed, PSE publicly represents:

9 GAS SITES: Five former WNG or predecessor companies manufactured
10 gas plant ("MGP") sites are currently undergoing investigation, remedial
11 actions or monitoring actions relating to environmental contamination: 1)
12 Everett, Washington; 2) "Gas Works Park" in Seattle, Washington; 3)
13 "Tacoma 22nd and A St." Site in Tacoma, Washington; 4) Chehalis,
14 Washington; and 5) the "Tideflats" area of Tacoma, Washington. Legal
15 and remedial costs incurred to date total approximately \$50.9 million and
16 currently estimated future remediation costs are approximately \$7.0
17 million. Work at both the Chehalis and Tideflats sites is substantially
completed. To date, the Company has recovered approximately \$59
million from insurance carriers and other third parties. Based on all
known facts and analyses, the Company believes it is not likely that the
identified environmental liabilities will result in a material adverse impact
on the Company's financial position, operating results or cash flow trends.

18 See Stapley Decl., Exh. 4. PSE is bound by these admissions, and may not now play both sides of the
19 field to its advantage. While Mr. Secrist may have internally submitted a potential range of damages to
20 his supervisors, PSE, as a corporation, submitted select future damage numbers to the State and the SEC.
21 These same numbers must apply to this litigation.

1 Recognizing this, PSE tries to cloud the undisputed facts by repeatedly accusing defendants of
2 using "low end" or inaccurate numbers. Defendants' reply is simple--we used PSE's own numbers.⁵
3 PSE does not dispute that the future damage numbers declared to the SEC and the State are reasonable.
4 See Secrist Deposition, p. 5. The FASB rules are in accord: "When no amount within the range is a
5 better estimate than any other amount, however, the minimum amount in the range shall be accrued."
6 Secrist Decl., Exh. D.

7
8 Given the regulatory impact of PSE's SEC and State disclosures, and the fact PSE agrees that
9 these damage numbers for Gas Works Park are reasonable, this Court should use the future damage
10 numbers represented to the State and the SEC. The use of other "high end" numbers is only speculation
11 that does not defeat summary disposition.

12 Even if the Court were to adopt PSE's "high end" number for Gas Works Park, the unproved
13 difference from the \$3.5 million already paid to PSE for future damage at the site does not create a ripe
14 justiciable controversy. The issue of ripeness turns on "the fitness of the issues for judicial decision and
15 the hardship to the parties of withholding court consideration." *Pacific Gas & Elec. Co. v. State Energy*
16 *Resources Conservation and Development Comm.*, 461 U.S. 190, 201 (1983). Perhaps the most
17 important consideration is whether, "the claim involves uncertain and contingent events that may not
18 occur as anticipated, or indeed may not occur at all." 13A Wright & Miller, Federal Practice and
19 Procedure Sec. 3532.2 at 141 (1984).

20
21 There is no "hardship" on PSE to dismiss the Gas Works Park claim when it already has money
22 in the bank (\$3.2 million to be precise) for future costs at this site. The hardship will be on the parties
23

24
25 ⁵ It is significant that PSE had a previously withheld many of the documents in its Opposition as privileged, even
26 though they were repeatedly requested by defendants and are the topic of a motion to compel before this court.
Prior to this time, defendants simply had PSE's SEC and State disclosures to work from. PSE's attempt to discredit
defendants' with inferences based on these disclosures is disingenuous.

1 and the Court preparing for litigation that may be much ado about nothing. Trial on whether there is
2 coverage for some speculative amount above the \$3.2 million mark at Gas Works, for example, would
3 be a waste of precious judicial resources.⁶ Such uncertain claims are not ripe and require dismissal.

4 PSE's "high end" number may only come to fruition if PSE's actual damages exceed the millions
5 it has been paid and allocated to Gas Works Park. The alleged additional contingencies are speculative.
6 As stated by Mr. Secrist: "These ranges attempt to account for various uncertain factors at those sites
7 which are still in a particularly fluid stage of development." Secrist Decl., p. 5. Such fluid numbers do
8 not warrant nor justify Court intervention at this time.
9

10 **2. PSE's "Not Yet Projected" Scenarios Do Not Present Disputed Questions of**
11 **Material Fact Nor a Justiciable Controversy.**

12 PSE also argues that the "not yet projected" numbers at Gas Works Park-Lake Union and Everett
13 Snohomish River mandates rejection of all outstanding claims. PSE is simply wrong.

14 First, the "not yet projected" sites are not at issue in this motion. Second, they do not present
15 "mature seeds" of a dispute that justify continued litigation and trial, as discussed in footnote 1.
16 Washington law requires that a justiciable controversy involve "an actual, present and existing dispute,
17 or the mature seeds of one, as distinguished from a possible, dormant, hypothetical, speculative, or moot
18 disagreement, . . ." *Diversified Indus. Dev. Corp. v. Ripley*, 82 Wn.2d 811, 815, 514 P.2d 137 (1973). It
19 is hard to image a viable trial of sites for which PSE cannot and does not project any past or future
20 damages. There is no evidence in the record substantiating alleged liability at Lake Union or the
21 Snohomish River beyond heresay. Mr. Secrist even states: "I further understood that if it was not yet
22
23

24 ⁶ To illustrate just how wasteful trial on this issue would be, PSE's Opposition includes a claim for \$726,784 for costs
25 incurred in connection with this insurance coverage litigation. See Opposition, p. 7 (chart). PSE is clearly not
26 entitled to these costs, particularly since it has been made whole for its past and estimated future damages. PSE was
not compelled to bring this litigation to recover these reimbursed costs. *Olympic Steamship Co., Inc. v. Centennial
Ins. Co.*, 117 Wn.2d 37, 811 P.2d 673 (1991).

possible to make reasonable assumptions about future site costs at all, it was better to give no projection than to give one in which I did not have reasonable confidence." Secrist Dep. at 4. The Court would hardly be in a position to award damages or relief with such testimony.⁷

Speculation as to damages that cannot be projected to exceed the amounts PSE has already received does not create a disputed question of fact that defeats this motion for partial summary judgment. "When a motion for summary judgment is made and supported as provided in this rule, an adverse party may not rest upon the mere allegations or denials of his pleading, but his response, by affidavits or as otherwise provided in this rule, must set forth specific facts showing there is a genuine need for trial." CR 56(e). PSE's "Not yet projected" response does not meet this standard.

E. PEDERSON Mandates Dismissal of PSE's Claims at Everett, Chehalis, A-Street and Gas Works Park.

PSE infers, without support, that defendants have failed to show that PSE allocated insurance proceeds to the sites at issue, as set out in *Pederson Fryer Farms v. Transamerica Ins. Co.*, 83 Wn.App. 432, 922 P.2d 126 (1996), *rev. denied*, 131 Wn.2d 1010, 932 P.2d 1255 (1997).⁸ The Court need only turn to PSE's own documents debunk this inference.

PSE states in response to Request for Admission No. 4:

PSE admits that as of December 31, 1997, PSE had recovered approximately \$55.1 million in compensation from all sources, including insurance carriers and others, in connection with actions relating to environmental contamination at sites including the listed sites. The total sum of \$55.1 million included approximately \$47.6 million from insurance carriers, approximately \$5.9 million from non-insurer third parties that were liable to PSE in contribution and/or indemnity,....

⁷ Of note, a number of defendants provided excess insurance to PSE that would only come into play if certain levels of damages are exceeded. Making a judicial determination with respect to these excess coverages in a damage vacuum would simply amount to a prohibited advisory opinion. *Diversified*, 82 Wn.2d at 815.

⁸ PSE also refers to *Thiringer v. American Motors Ins. Co.*, 91 Wn.2d 215, 588 P.2d 191 (1978) in support of its position. Of note, *Pederson* does not even cite to *Thiringer* in its allocation analysis. *Thiringer* is discussed in defendants' favor on page 7 of their Motion.

1 Stapley Decl., Exh. 3. This is confirmed in the "Deferred Environmental Cost" spreadsheet sent to the
2 State, wherein PSE identifies the past and future costs attributed to the Chehalis, Everett, A-Street and
3 Gas Works Park sites, subtracts insurance and third party recoveries, and shows an overall insurance
4 surplus. Stapley Supp. Decl., Exh. A. Moreover, PSE's Opposition admits that it has allocated a portion
5 of \$13.5 million to past and future costs at these sites. See Opposition p. 13, line 24.

6 These disclosures complete the analysis required by *Pederson*. Defendants simply ask that PSE
7 lives with its own allocation. The *Pederson* standard is met, and summary dismissal of these claims is
8 proper.
9

10 IV. CONCLUSION

11 There is no dispute that all of PSE's past costs for the Chehalis, Everett, A-Street and Gas Works
12 Park sites have been paid by other insurers. PSE admits this in its Opposition, and in its SEC and State
13 disclosures. Accordingly, summary judgment dismissing all of PSE's claims for past costs with
14 prejudice is required.
15

16 Similarly, there is no question that PSE has allocated settlement funds for future costs at these
17 same sites, as admitted in SEC disclosures and disclosures to the State of Washington. PSE does not
18 dispute these amounts in its Opposition. Again, dismissal of PSE's future claims with prejudice in these
19 amounts is mandated. Lastly, dismissal of all claims, past and future, against the first party carriers is
20 required.
21

22 RESPECTFULLY SUBMITTED this 1st day of June, 1999.

23 SOHA & LANG, P.S.

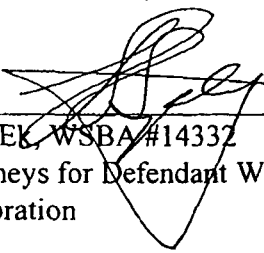
24 By: 

25 Steven Soha, WSBA #09415

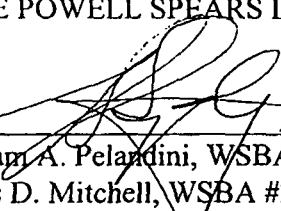
26 R. Lind Stapley, WSBA #19512

Attorneys for Defendants Century Indemnity Company, Cigna
Insurance Company, Pacific Employers Insurance Company

1 MERRICK HOFSTEDT & LINDSEY

2
3 By:  FOR
4 Tyna Ek, WSBA #14332
5 Attorneys for Defendant Westport Insurance
6 Corporation

7 LANE POWELL SPEARS LUBERSKY

8 By:  FOR
9 William A. Pelandini, WSBA #11521
10 James D. Mitchell, WSBA #22180
11 Attorneys for Defendant Underwriters at Lloyd's,
12 London, London Market Companies

13 BLACKWELL SANDERS PEPER MARTIN

14 By: _____
15 Mark V. Dugan
16 Attorneys for Defendant The Seven Provinces
17 Insurance Company NV

18 GORDON & REES

19 By: _____
20 Sara M. Thorpe
21 Attorneys for Defendant Centennial Insurance
22 Company

23 PEERY, HISCOCK, PIERSON, KINGMAN &
24 PEABODY

25 By: _____
26 Michael E. Ricketts, WSBA #9387
Attorneys for Defendants Old Republic Insurance
Company, Pacific Mutual Marine Office, Inc. and
Employers Insurance of Wausau, a Mutual
Company

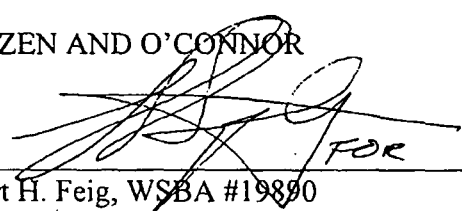
LUCE, FORWARD, HAMILTON & SCRIPPS

By: _____
John Riedl, admitted *pro hac vice*
Cathie Childs, admitted *pro hac vice*
Attorneys for Defendant Westport Insurance Corp.

WILSON SMITH COCHRAN & DICKERSON

By: _____
David M. Jacobi, WSBA #13524
Attorneys for Defendant United States Fire
Insurance Company

COZEN AND O'CONNOR

By:  FOR
Curt H. Feig, WSBA #19890
Attorneys for The Home Insurance Company

MIKKELBORG, BROZ, WELLS & FRYER

By: _____
John E. Lenker, WSBA #13067
Attorneys for Defendant Centennial Insurance
Company

DAAR, FISHER, KANARIS & VANEK, P.C.

By: _____
Lawrence D. Mason
Attorneys for Pacific Mutual Marine Office, Inc.
and Employers Insurance of Wausau, a Mutual
Company

1 CLAUSEN MILLER, P.C.

DAVIS WRIGHT TREMAINE

2
3 By: _____
James R. Swinehart
4 Daniel R. Hoyt
Attorneys for Old Republic Insurance Company
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

By: _____
Thomas S. James, Jr., WSBA #11078
Attorneys for The Travelers Casualty and Surety
Company and The Travelers Indemnity Company

CERTAIN DEFENDANTS' REPLY TO PSE'S MEMORANDUM
IN OPPOSITION TO MOTION FOR PARTIAL SUMMARY JUDGMENT - 13
pse\p-reply.ls

0692

SOHA & LANG, P.S.
ATTORNEYS AT LAW
1210 NORTON BUILDING
801 SECOND AVENUE
SEATTLE, WASHINGTON 98104
(206) 624-1800/Fax (206) 624-3585

AltinoEPA 000063

FILED
1999 JUN -1 PM 5:41
SUPERIOR COURT CLERK
SEATTLE, WA

Honorable Philip Hubbard
Hearing Date: June 4, 1999

IN THE SUPERIOR COURT OF WASHINGTON FOR KING COUNTY

PUGET SOUND ENERGY, INC.,

Plaintiff,

v.

ALBA GENERAL INSURANCE COMPANY; *et. al.*,

Defendants.

NO. 97-2-29050-3 SEA

CERTAIN FIRST-PARTY
INSURERS' SUMMARY
JUDGMENT REPLY BRIEF

I. INTRODUCTION

In its Opposition to Defendants' Motion for Partial Summary Judgment, Puget Sound Energy, Inc. ("PSE") did not rebut the grounds entitling the first-party insurers to summary judgment. PSE cannot and does not dispute that the limited amounts allegedly at issue under the first-party policies have already been paid to PSE. Due to the unique nature of first-party property insurance coverage, and the failure of Puget Sound Energy to address the first-party insurers in its summary judgment opposition materials, the signatories to this memorandum thought it necessary to file a separate reply brief in support of their summary dismissal.

PSE has alleged that the first-party carriers issued insurance policies to Washington Natural Gas Co. (now Puget Sound Energy, or "PSE") ranging in policy years from 1979 to 1985. Complaint ¶4.2 at 5-6 and Exhibit B to Complaint. PSE claims in this lawsuit that the first-party insurers must indemnify PSE for the "physical loss and damage" to the real and personal property owned by WNG which occurred during the policy periods. *See* Complaint ¶7.4 at 9. Because the first-party policies only provide coverage for property owned by what was then known as Washington Natural Gas ("WNG"), PSE has only sued the first-party property insurers for insurance

CERTAIN FIRST PARTY INSURERS' SUMMARY JUDGMENT
REPLY BRIEF - 1

1.1190005/PLEAD-TEP215-2

ORIGINAL

0705

MERRICK, HOFSTEDT & LINDSEY, P.S.
ATTORNEYS AT LAW
710 NINTH AVENUE
SEATTLE, WASHINGTON 98104
(206) 682-0810

AltinoEPA 000064

1 policies only cover property that was owned by Washington Natural Gas between 1979 and 1985²,
2 and only apply to physical damage to that property which occurred between 1979 and 1985.

3 In response to the pending motion for summary judgment, PSE admits that it already has
4 received more than enough money to indemnify it for all incurred and anticipated clean-up expenses
5 at the four sites at issue in this motion³, according to PSE's SEC filings. PSE does not claim to have
6 been in error in its SEC filings, and further admits that it is not entitled to a double recovery. Thus
7 the parties appear to agree on the key facts and legal principles necessary to decide the pending
8 motion. Failing to address the first-party insurers separately, PSE offers just three arguments in
9 opposition to the motion: (1) SEC reporting requirements forbid PSE from reporting liabilities for
10 which PSE has no reasonable damage estimate; (2) SEC reporting requirements mandate that if the
11 damage estimate is a range, and no one number within that range is more reasonable than another,
12 then PSE must report the low end of the cost range; and, (3) Potential future liabilities could cause
13 PSE to incur additional expenses in the future. An analysis of these issues demonstrates that none of
14 these three arguments apply to the first-party insurers.

15 **A. PSE Has Given A Damage Estimate For All Sites For Which It Seeks First-Party**
16 **Coverage**

17 PSE argues that its exposure may be greater than what was reported to the SEC because
18 FASB accounting requirements prohibit accounting for a loss before its value can be reasonably
19 estimated. See PSE's opposition memorandum at 4-5. This argument is inapplicable to the first-
20 party insurers, because PSE has made and reported dollar estimates for all three sites for which PSE
21

22 ² In Washington, groundwater is owned by the state rather than the owner of the surface property,
23 and therefore groundwater is considered third-party property. See RCW 90.44.040; *Olds-Olympic v.*
Commercial Union, 129 Wn.2d 464, 476, 918 P.2d 923 (1996).

24 ³ Only three of the four sites at issue in the motion are relevant to the first-party insurers because the
25 Gas Works Park site was not owned by WNG, and PSE is not seeking first-party coverage for that
26 site.

CERTAIN FIRST PARTY INSURERS' SUMMARY JUDGMENT
REPLY BRIEF - 3

0707

MERRICK, HOFSTEDT & LINDSEY, P.S.
ATTORNEYS AT LAW
710 NINTH AVENUE
SEATTLE, WASHINGTON 98104
(206) 682-0610

1 seeks first-party coverage; *i.e.*, Everett, Chehalis and "A" Street. See Exhibits B and C to the
2 Declaration of Steven Secrist Regarding Justiciability.

3 **B. PSE's Damage Estimate For Every Site For Which It Seeks First-Party**
4 **Coverage Is A Single Dollar Amount, Not A Range Of Numbers**

5 PSE argues that its exposure at the sites at issue may be underreported in its SEC filings
6 because under FASB accounting requirements, when the damage estimate is a range, and no one
7 number within that range is more reasonable than another, then PSE must report the low end of the
8 cost range. See PSE's opposition memorandum at 4-5. PSE proceeds to compare the cost estimate
9 reported to the SEC for each site, to the cost estimate for each site if the high rather than low end of
10 the cost range were used, presumably to support an argument that PSE might incur costs at or near
11 the high end range rather than the low end range number reported in PSE's SEC filing. See table at
12 pages 6-7 of PSE's opposition memorandum.⁴ This speculative argument is inapplicable to the first-
13 party insurers because a cost range is not given for any of the sites for which first-party coverage is
14 sought. Therefore, for the sites for which PSE seeks first-party coverage, there truly is no high end
15 versus low end debate.

16 **1. Everett Site**

17 According to exhibits A, B and C of the Secrist Declaration, PSE's estimate of all past and
18 future costs associated with the clean-up of the Everett site was and is \$3,250,000. No range is given
19 for Everett in any of these reports, but rather a single dollar figure. PSE's January 13, 1999 quarterly
20 report (Exhibit B to the Secrist Declaration) indicates that the primary remediation method at the
21 Everett site, the planned sheet pile barrier wall, was completed under budget. PSE has already

22
23 ⁴ PSE appears to have improperly labeled the third column of the table at pages 6-7 of its opposition
24 memorandum. The column is labeled as an estimate of future costs at the high end of the range, but
25 in reality is an estimate of all past and future costs using the high end of the future cost estimate
26 range. Exhibits B and C to the Secrist Declaration, from which the table in PSE's legal
memorandum is derived, make it clear that the dollar figures in the third column of PSE's table
represent the cost of the entire project (*i.e.*, past and future costs) using all high end numbers.

1 submitted a draft "Completion Report" for the Everett site to the Washington Department of
2 Ecology. Secrist Declaration ¶26 at 11. The total cost estimate of \$3,250,000 in PSE's January
3 1999 quarterly report is identical to the cost estimate reported in PSE's report issued one year earlier,
4 where it was reported as having remained unchanged from a still earlier report for the Everett site.
5 Compare Exhibits A and B to the Secrist Declaration.

6 2. Chehalis Site

7 According to exhibits A, B and C of the Secrist Declaration, PSE's estimate of all past and
8 future costs associated with the clean-up of the Chehalis site was and is \$2,000,000. No range is
9 given for Chehalis in any of these reports, but rather a single dollar figure. Exhibit B to the Secrist
10 Declaration indicates that the remediation at Chehalis has been completed, that PSE is merely
11 monitoring the results of the remediation, and that PSE hopes to be able to prepare a site closure
12 report this Spring. The remediation is essentially finished, and the \$2,000,000 cost estimate has
13 remained unchanged from prior years. Compare Exhibits A, B and C to the Secrist Declaration
14 related to Chehalis.

15 3. 22nd and "A" Street, Tacoma Gas Company Site (a/k/a Upland Source 16 Control)

17 The "A" Street Site is factually unique because only a very small portion of the site was
18 owned by WNG during the first-party policy years, and PSE has not performed any testing for
19 contamination or clean-up of contamination on the portion of the site that was owned. See Plaintiff's
20 Responses To First-Party Requests For Admission Concerning A Street Site, attached as Exhibit 1.
21 Therefore, there are no past or future damages that are even potentially covered by the first-party
22 policies. However, exhibits A, B and C of the Secrist Declaration all consistently list \$700,000 as
23 the estimated past and future cost to clean-up the entire "A" Street Site.⁵ No range has been given.

24 ⁵ The table at page 6-7 of PSE's opposition memorandum lists the "A" Street costs as \$1,105,426.
25 However, PSE cites to Exhibits B and C to the Secrist Declaration as the source of the information
26 reflected in this table, and Exhibits B and C consistently refer to the total cost estimate for "A" Street
as \$700,000. Presumably, the larger figure in the table in PSE's brief includes the legal defense
(continued next page)

Moreover, since a freeway has been built over the section of the site that was owned during the policy years, PSE has no plan to test or alter this portion of the site. See Exh. 1, RFA 8.

C. The Potential Future Liabilities Cited By PSE Would Not Impact The First-Party Insurers

PSE makes a confusing and speculative argument in its opposition memorandum about possible future contingencies which may increase PSE's liabilities, and thereby its need for indemnity. This argument is confusing because it relies heavily upon sites that are not at issue in the pending motion. Moreover, the argument has no applicability to the first-party insurers, which would not be responsible for these future contingent liabilities in any case. PSE's opposition materials are directed solely to the CGL carriers that insure against certain third-party liabilities.⁶ The first-party policies respond only to physical damage that occurred between 1979 and 1985 to property then owned by WNG. The alleged contingent liabilities identified by PSE solely involve sites that were not owned by WNG during the first-party policy years:

- Gas Works Park Clean-up (Opposition, pp. 7-8)
- Remediation Expense for Lake Union (Opposition, pp. 8-9)
- Thea Foss Waterway Clean-up (Opposition, pp. 9-10)
- River Street Clean-up⁷ (Opposition, p. 10)
- Quendall Terminals Remediation (Opposition, p. 10-11)
- Any Future Exposure for River Street not compensated by past settlements (opposition p. 11-13)

costs for litigation with the Department of Transportation listed as WSDOT Federal/State legal costs totaling \$405,426.67 on page 1 of Exhibit C. to the Secrist declaration. Of course, such legal costs for litigation with a third party are irrelevant to the claim against the first-party property insurers, and PSE has never asserted a claim for these costs against the first-party insurers.

⁶ The first-party insurers find it telling that PSE's conclusion speaks only to CGL policies and liability coverage. The opposition brief does not address the first-party property insurers at all, and they should be dismissed as a matter of law.

⁷ The River Street site was previously owned by PSE, but was sold long before the inception of the first-party policies.

CERTAIN FIRST PARTY INSURERS' SUMMARY JUDGMENT
REPLY BRIEF - 6

MERRICK, HOFSTEDT & LINDSEY, P.S.
ATTORNEYS AT LAW
710 NINTH AVENUE
SEATTLE, WASHINGTON 98104
(206) 682-0610

- Possible remediation expenses for the Snohomish River (not mentioned in PSE's opposition brief, but mentioned in Secrist's declaration, ¶

The Gas Works Park site was not owned by WNG, the Snohomish River was not owned by WNG, Lake Union was not owned by WNG, the Thea-Foss Waterway was not owned by WNG, and Quendall Terminals was not owned by WNG. Whatever of these contingencies and whether they come to pass or not, the first-party property policies, by their very terms, do not and cannot respond. Therefore, these arguments raised by PSE are irrelevant and inapplicable to the first-party insurers. PSE did not and can not produce evidence that the property damage that occurred between 1979 and 1985 at Everett, Chehalis and "A" Street will somehow increase in the future.

PSE admits that it is not entitled to a double recovery and, based upon PSE's own admissions and reported allocations, PSE has already been fully compensated for every claim asserted against the first-party insurers. As a result, there is no justiciable controversy between PSE and the first-party insurers.

III. CONCLUSION

PSE has been fully reimbursed for all costs that it claims it has incurred and ever will incur in relation to the contamination of the three sites for which PSE seeks first-party coverage. PSE's opposition materials are directed solely at the liability insurers. None of PSE's claimed contingencies or range of dollar estimates are at Everett, Chehalis or "A" Street. Therefore, any possible upward adjustment of PSE's damage estimates based upon the theories advanced in opposition to the pending motion, could not impact the first-party policies or in any way create a recovery shortfall for property damage incurred between 1979 and 1985. PSE has been fully reimbursed for all past and estimated future costs at the three sites upon which the first-party insurers were sued. Any further recovery would represent a double recovery, to which PSE has admitted it is not entitled. Therefore, the first-party insurers should be dismissed from this action as a matter of law.

CERTAIN FIRST PARTY INSURERS' SUMMARY JUDGMENT
REPLY BRIEF - 7

0711

MERRICK, HOFSTEDT & LINDSEY, P.S.
ATTORNEYS AT LAW
710 NINTH AVENUE
SEATTLE, WASHINGTON 98104
(206) 682-6610

1 DATED this 1st day of June, 1999.

2 Respectfully submitted,

3 MERRICK, HOFSTEDT & LINDSEY, P.S.

4
5 By

Tyna Ek
Tyna Ek, WSBA #14332
Of Attorneys for Defendant Westport Insurance
Corporation

8 LUCE, FORWARD HAMILTON & SCRIPPS

9
10 By

Tyna Ek
John L. Riedl, Admitted *Pro Hac Vice*
Cathie Childs, Admitted *Pro Hac Vice*
Of Attorneys for Defendant Westport Insurance
Corporation

13 This reply brief is also submitted on behalf of Centennial Insurance Company, Old Republic
14 Insurance Company, Pacific Mutual Marine Office, Inc., as Managing General Agent for Employers
15 Mutual Casualty Company, and Employers Insurance of Wausau, A Mutual Company.

26 CERTAIN FIRST PARTY INSURERS' SUMMARY JUDGMENT
REPLY BRIEF - 8

0712

MERRICK, HOFSTEDT & LINDSEY, P.S.
ATTORNEYS AT LAW
710 NINTH AVENUE
SEATTLE, WASHINGTON 98104
(206) 682-0610

PUGET SOUND ENERGY, INC.

VS.

SEALED SUB

ALBA GENERAL INS. COMPANY,
ET. AL.

Case No. 97-2-29050-3 SEA

Document Title CONFIDENTIAL

The above-named document was: ☐ too large for the case legal file.

☒ sealed per court order, Sub. No. PROTECTIVE ORDER

☐ unmicrofilmable.

It has been stored or handled in the following manner:

☐ box on open shelving.

☐ envelope on open shelving.

☒ exhibit room. - ENV.

☐ expunged, per Sub. No. _____

: document is needed for viewing in Court or for

File

Date

SUB NO. 130 A

DATE FILED 05-21-99

PGS:
259
-
278

99 MAY -3 PM 4: 26
KING COUNTY
SUPERIOR COURT CLERK
SEATTLE, WA

The Honorable Phil G. Hubbard, Jr.
Oral Argument Requested
Motion Date: 5/7/99

SUPERIOR COURT OF THE STATE OF WASHINGTON
FOR KING COUNTY

PUGET SOUND ENERGY, INC.,

Plaintiff,

v.

ALBA GENERAL INSURANCE COMPANY,
ET AL.,

Defendants.

NO. 97-2-29050-3 SEA

PUGET SOUND ENERGY'S BRIEF IN
OPPOSITION TO CERTAIN
DEFENDANTS' MOTION TO COMPEL
PRODUCTION OF CERTAIN
PRIVILEGED DOCUMENTS

Plaintiff Puget Sound Energy, Inc. ("PSE") is defending claims by the state and federal government alleging that PSE is liable for the cost of cleaning-up environmental contamination at the five sites related to its former facilities. In the course of defending those claims, PSE's employees, lawyers, expert consultants, and co-defendants have generated documents protected by the work-product doctrine. Accordingly, PSE has withheld from discovery in this case a relatively small volume of such privileged documents. PSE has meticulously entered the vast majority of the withheld documents on a voluminous privilege log.

Now, despite PSE's restrained approach to protecting its legal privileges and those of PSE's co-defendants in the underlying cases, the defendant insurers seek to invade those privileges. Neither the governing law nor logic supports the insurers' challenge to PSE's discovery privileges. Instead, the Motion to Compel is a transparent attempt by the insurers to inflict expense upon their policyholder and thus erect yet another obstacle to obtaining coverage. For the following reasons, the Motion should be denied.

PUGET SOUND ENERGY'S BRIEF IN OPPOSITION TO
CERTAIN DEFENDANTS' MOTION TO COMPEL - I

GORDON MURRAY TELDEN
1325 Fourth Avenue, Suite 1800
Seattle, Washington 98101
(206) 467-6477

AltinoEPA 000072

I. STATEMENT OF FACTS

A. The Underlying Cases and the Insurance Coverage Litigation

During much of the 1990's, PSE, like virtually any manufacturer or public utility, has been engaged in litigation arising out of alleged contamination at the sites of certain of its former facilities. Declaration of Steven Secrist ¶ 2, filed herewith. As pertinent to this case, claims have been asserted against PSE for contamination at five sites: (1) Everett; (2) Chehalis; (3) Gas Works Park; (4) 22nd & "A" Street in Tacoma; and (5) the Thea Foss Waterway in Tacoma. The Washington Department of Ecology ("DOE") and/or the U.S. E.P.A. have asserted that PSE is responsible for funding the environmental clean-up of these sites. With respect to those sites, PSE either is or previously was actively engaged in administrative litigation proceedings to determine the scope of its clean-up liability or faces the threat of imminent litigation in the event that DOE is dissatisfied with PSE's clean-up actions or in the event that PSE chooses to file a contribution action against other responsible parties. Id.

PSE and its counsel have hired a number of engineering firms to assist in these litigations. These firms, as well as PSE's own employees, have created a substantial volume of documents pertaining to the conditions at the sites. A relatively small portion of these documents are confidential in that they concern PSE's strategy for defending the underlying cases and minimizing the costs of the various clean-up efforts. Id. ¶ 3.

Finding itself on the receiving end of these liability claims, PSE turned to its insurers for coverage. But the insurers chose, instead, to fight, and this coverage action ensued. In the nearly one year during which this case has been actively litigated, none of the defendant insurers has acknowledged any coverage obligation or paid any, coverage whatsoever. Id. ¶ 4.

B. The Joint-Defense Agreements

At three of the underlying sites, Gas Works Park, 22nd & "A" Street, and the Thea Foss Waterway, PSE is not the only company that has been identified by the government as potentially

1 responsible for the costs of remedying contamination. In the cases involving those sites, PSE has
2 entered into various joint-defense agreements with certain of its co-"PLP's" (meaning Potentially
3 Liable Parties" as that term is used in the Model Toxics Control Act, or "Potentially Responsible
4 Parties" ("PRP's") under the federal CERCLA statute). With respect to Gas Works Park, PSE has
5 entered into an agreement and shares a common interest with the City of Seattle. With respect to the
6 22nd & "A" Street site, PSE has entered into a joint-defense agreement with the City of Tacoma, the
7 Washington Department of Transportation, Advance Ross Corporation, Waterway Properties, Inc.,
8 and PacifiCorp. Id. Finally, PSE has entered into two different such agreements in connection with
9 the Thea Foss Waterway site, with a large number of co-PRP's at that site. Id. ¶ 5.

10 In each case, the co-PRP's that are party to the joint-defense agreements have a common
11 interest in minimizing the collective liability of the group. The agreements (with the exception of the
12 Gas Works Park agreement) require the signatory co-PRP's to maintain the confidentiality of
13 documents generated by any one PRP or consultant or attorney employed by the PRP group. Id. ¶ 6.

14 Such joint-defense agreements are a common part of the defense of any complex litigation,
15 particularly in the environmental field. Were PSE to choose not to enter into such agreements, the
16 company likely would not be able to reap the strategic and cost benefits associated with a joint
17 defense. Id. If the insurers are successful in invading PSE's work-product protection in the
18 underlying claim files, parties adverse to PSE, including the Department of Ecology and the U.S.
19 E.P.A., may attempt to compel discovery of those same protected documents. PSE would vigorously
20 oppose any such disclosure. However, if those parties were successful, PSE's interests in the
21 underlying cases could be severely prejudiced. Id. ¶ 7.

22 C. PSE's Document Productions, Work-Product Claims, and Privilege Logs

23 PSE has produced a staggering volume of documents in this case. In anticipation of the
24 insurers' discovery demands, PSE has produced over 1,000 boxes of documents, containing some 1.4
25 million pages. Declaration of Kathy Hipple ¶ 2, filed herewith. To PSE's knowledge, these

1 documents represent every non-privileged record in PSE's possession or control that pertain to the
2 historical events at the sites and to the current conditions and remedial work at the sites. Secrist Dec.
3 ¶ 8.
4
5

6 PSE's has claimed work-product protection in the documents in this matter in a narrow and
7 restrained manner. Out of a production of over 1,000 boxes, PSE has withheld a total of 14 boxes of
8 privileged documents. Declaration of Franklin D. Cordell ¶ 2, filed herewith. In connection with the
9 Everett and Chehalis sites, where PSE has no co-PRP's at this time, PSE has withheld virtually no
10 documents on grounds of privilege. With respect the other sites, PSE has endeavored not to withhold
11 any document, even if arguably protected work-product, that constitutes or contains "raw data"—e.g.,
12 the results of groundwater or soil samples and the like. Instead, PSE claims work-product protection
13 only those documents that reflect the strategy, conclusions, theories, and/or mental impressions of
14 PSE, its consultants, or its counsel. Id. With few exceptions of only a few categories of documents,
15 as discussed in Section I.D., below, PSE has listed the withheld documents in a detailed and
16 voluminous privilege log, which runs to 3,111 entries. Id.
17
18
19
20
21
22
23
24
25
26
27

28 **D. The Documents in Underlying Defense Counsel's Files**

29 The Motion to Compel addresses certain litigation files of Graham & James/Riddell Williams.
30 PSE's defense counsel in certain of the underlying environmental actions. Those documents consist
31 of attorney working files, correspondence files, and the like from the underlying environmental
32 litigations (collectively, the "Graham & James Files"). Hipple Dec. ¶ 3. The Graham & James Files
33 are voluminous—all told they amount to over 338 boxes. Moreover, those files consist virtually
34 entirely of two subcategories of documents: (1) files that are plainly privileged in that they are
35 correspondence between PSE and its lawyers or between PSE's counsel and joint-defense counsel,
36 attorney research and working files, and the like; and (2) files that are clearly non-privileged, such as
37 pleadings, transcripts, and historical documents, virtually all of which have been produced to the
38 insurers in this case either from Graham & James' files or from other, less burdensome sources such
39
40
41
42
43
44
45
46
47

1 as PSE's own files. Id. ¶ 4. Accordingly, PSE has objected on grounds of burden and declined to
2 produce or log the Graham & James Files.
3

4 5 **II. STATEMENT OF ISSUES**

6
7 1. Are documents prepared by PSE, its counsel, and experts in anticipation and
8 furtherance of litigation, protected from discovery pursuant to the work-product doctrine?
9

10 2. Do independently protected documents retain their protected status where the
11 documents are shared pursuant to a joint-defense agreement among parties having a common interest
12 in the defense of litigation?
13
14

15 3. Should PSE be compelled to engage in a costly review and logging effort concerning
16 voluminous attorney working files, where the documents in those files are either clearly privileged or
17 have already been produced from less burdensome sources?
18
19
20
21

22 23 **III. EVIDENCE RELIED UPON**

24
25 PSE's opposition is based upon the declarations of Steven Secrist, Franklin D. Cordell, and
26 Kathy Hipple, filed herewith, and the pleadings and documents on file herein.
27
28

29 30 **IV. AUTHORITY AND ARGUMENT**

31 **A. The Documents at Issue Were Prepared in Anticipation or Furtherance of the** 32 **Underlying Litigations and Are Protected Work Product** 33

34 The insurers essentially concede, as they must, that the documents at issue constitute
35 protected work product pursuant to CR 26. As Mr. Secrist's testimony makes clear, the withheld
36 documents were prepared by PSE or its experts in anticipation, or in furtherance, of PSE's defense in
37 environmental litigation. The insurers argue, instead, that the documents have lost their protected
38 status through application of exceptions to the doctrine. For the following reasons, however, none of
39 those exceptions applies.
40
41
42
43
44
45
46
47

1 **B. No Exception to the Work-Product Doctrine Applies**

2
3 **1. Waste Management is Incorrect and Has Been Widely Rejected**

4
5 The insurers rely heavily on the decision in Waste Management, Inc. v. International Surplus
6 Lines Ins. Co., 579 N.E.2d 322 (Ill. 1991). The Waste Management decision is well known in the
7 insurance coverage arena, largely because it has been savagely criticized by the overwhelming
8 majority of non-Illinois courts that have considered insurer challenges to the policyholder's discovery
9 privileges. No fewer than 10 courts have roundly rejected Waste Management's reasoning,¹ many
10 with strong language such as that used by the California Court of Appeal in rejecting the very
11 arguments made by the insurers in this case:
12
13
14
15
16
17
18

19 We consider the [insurers'] theory fanciful, and refuse to adopt the rules announced by
20 the Illinois Supreme Court in a similar case. Waste Management v. Intern. Surplus
21 Lines
22

23
24 In their motion to compel, the carriers claimed they were entitled to all documents
25 prepared by Rockwell's lawyers and their consultants in defending the underlying
26 actions because, in this action, Rockwell has placed in issue its conduct which gave
27 rise to the underlying claims. The referee and the trial court rejected this approach but,
28 again, the carriers have raised it in opposition to Rockwell's petition. Believe it or not,
29 the Illinois Supreme Court bought this one too, albeit finding the point "superfluous"
30 in light of its acceptance of the insurers' other theories.
31
32
33
34
35
36
37
38

39
40 ¹ Rhone-Poulenc Rorer, Inc. v. Home Indem. Co., 32 F.3d 851, 861-66 (3d Cir. 1994); Bituminous
41 Cas. Corp. v. Tonka Corp., 140 F.R.D. 381, 386 (D. Minn. 1992) (finding Waste Management's reasoning
42 "fundamentally unsound"); North River Ins. Co. v. Philadelphia Reinsurance Corp., 797 F. Supp. 363, 367-68
43 (D.N.J. 1992); Eastern Air Lines, Inc. v. United States Aviation Underwriters, Inc., 716 So.2d 340, 342-43
44 (Fla. App. 1998); Pittston Co. v. Allianz Ins. Co., 143 F.R.D. 66, 71 (D.N.J. 1992); Remington Arms Co. v.
45 Liberty Mut. Ins. Co., 142 F.R.D. 408, 417 (D. Del. 1992) ("the [Waste Management court] accepted this
46 strange theory"); Owens-Corning Fiberglas Corp. v. Allstate Ins. Co., 660 N.E.2d 765, 769 (Ohio Ct.
47 Com. Pls 1993) (stating Waste Management is "outweighed by authority" and insurers' common-interest
argument is "somewhat laughable"); Wisconsin v. Hydrite Chem Co., 582 N.W.2d 411, 418-22 (Wisc. App.
1998); Imperial Corp. of Am. v. Shields, 167 F.R.D. 447, 452 (S.D. Cal. 1995).

1 Rockwell Int'l Corp. v. Aetna Cas. & Sur. Co., 26 Cal. App. 4th 1255, 1260, 32 Cal. Rptr. 2d 153, 161
2
3 (2 Dist. 1994) (emphasis added; citations omitted). The Court likewise should decline to follow the
4 defective reasoning of Waste Management.
5

6
7 **2. The Insurers Are Fully Adverse to PSE; Thus the "Common Interest"**
8 **Exception Does Not Apply**
9

10 Clinging to Waste Management, the defendant insurers argue that PSE and its insurers share a
11 "common interest" and thus are the functional equivalent of co-clients of a single attorney. As the
12 deluge of above-cited decisions have found, where an insurer has declined to pay a penny of
13 coverage, and has forced its policyholder to sue to enforce its coverage rights, the notion that the
14 policyholder shares a common interest with the insurer is "somewhat laughable." The Rockwell
15 court aptly described the fallacy of the common-interest argument in this context:
16
17

18 After embracing the carriers' cooperation clause argument, the Illinois Supreme Court
19 found their common interest argument irresistible and adopted it too. Undisturbed by
20 the fact that the carriers had not provided a defense or otherwise participated in the
21 underlying actions, and undeterred by the fact that, as a result, no single attorney was
22 acting jointly for two clients, the Illinois court held that, "under the common interest
23 doctrine, when an attorney acts for two different parties who each have a common
24 interest, communications by either party to the attorney are not necessarily privileged
25 in a subsequent controversy between the two parties. . . . In Illinois, they don't let
26 little things like conflict of interest get in their way."
27

28 Rockwell, supra, 26 Cal. App. 4th at 1264 n.3 (emphasis added). Indeed, the notion that PSE is
29 defending the underlying cases for the benefit of the insurers must have come as a surprise to PSE's
30 management and ratepayers, who have been funding this coverage litigation for nearly a year, with no
31 end in sight.
32

33 Even where a liability insurer has agreed to defend its policyholder under reservation of
34 rights, Washington law is strongly committed to the view that the retained defense counsel
35 "represents only the insured, not the [insurance] company." Tank v. State Farm Fire & Cas. Co., 105
36
37
38
39
40
41
42
43
44
45
46
47

1 Wn.2d 381, 388, 715 P.2d 1133 (1986). This view is directly contrary to the common-interest
2 principle under Washington law, which requires that the parties at issue be jointly represented by the
3 same counsel. See, e.g., Cummings v. Sherman, 16 Wn.2d 88, 96, 132 P.2d 998 (1943). The mere
4 fact that the insurers may reap an incidental benefit from PSE's successful defense of the underlying
5 actions does not create a "common interest" for privilege purposes. The Court should reject this
6 argument.
7
8
9
10
11
12
13
14

15 **3. Mere Logical Relevance Does Not Place Documents "At Issue"**
16

17 The insurers argue that, by bringing this insurance coverage action, PSE has placed "at issue"
18 the content of the protected work-product documents. This argument, however, confuses mere
19 logical relevance with the type of specific reliance upon the content of privileged documents that can
20 place those documents "at issue" and vitiate the privilege. Washington law recognizes the possibility
21 of a waiver of a discovery privilege where: (1) the party claiming the privilege asserts a claim or
22 defense that turns on the content of privileged material; and (2) the opposing party has no other
23 means of discovering equivalent information from non-privileged sources. The paradigm
24 applications of the "at issue" exception include a defendant relying on an "advice of counsel" defense
25 or a client bringing a legal malpractice claim, both of which waive the relevant communications with
26 counsel. Pappas v. Holloway, 114 Wn.2d 198, 207, 787 P.2d 30 (1990).
27
28
29
30
31
32
33
34
35
36
37
38
39
40

41 These traditional applications of the "at issue" exception are a far cry from the insurers'
42 claims in this motion, which amount to an attempt to create a rule-swallowing relevance exception to
43 the work-product doctrine. The insurers have not identified a single issue in this case that satisfies
44 the "at issue" principle—PSE is in no way relying upon the specific content of the protected
45
46
47

1 documents to establish its claims. The only issues proffered by the insurers is the reasonableness of
2
3 PSE's actions and costs in the underlying actions, both of which are potential coverage defenses of
4
5 the insurers. By withholding certain documents on work-product grounds, PSE too gives up the
6
7 opportunity to use the documents in this case. Therefore, no inequity of the sort addressed in the
8
9 "advice of counsel" and attorney-malpractice scenarios will arise here.²
10
11

12
13 Finally, the "at issue" exception applies only where the party seeking discovery has no non-
14
15 privileged source for the information sought. E.g., Pappas, 114 Wn.2d at 207. The insurers can make
16
17 no such showing here. To the contrary, the insurers have had access to some 1.4 million pages of
18
19 information pertaining to every aspect of the underlying sites and litigation, including the history of
20
21 the sites, the progress of the investigations and clean-ups, and the underlying litigations. The vast
22
23 majority of the documents pertaining to the sites are entirely public documents—either historical
24
25 documents from PSE's files or engineering reports that have been produced both to government
26
27 regulators and the insurers. In sum, the "at issue" exception does not apply.
28
29
30
31
32
33
34
35
36
37

38
39
40 ² See Rockwell, 26 Cal. App. 4th at 1268 ("The in issue doctrine creates an implied waiver of the
41
42 privilege only when the client tenders an issue involving the substance or content of a protected
43
44 communication, not where the privileged communication simply represents one of several forms of indirect
45
46 evidence in a particular case. For this reason, the doctrine has no application in a coverage action between an
47
insured and its carrier where the issues turn on the underlying facts and the insured is not relying on the
advice of counsel for any purpose."); Rhone-Poulenc Rorer, 32 F.3d at 863 ("[privileged attorney] [a]dvice is
not in issue merely because it is relevant, and does not necessarily become in issue merely because the
attorney's advice might affect the client's state of mind in a relevant manner. The advice of counsel is placed
in issue where the client asserts a claim or defense, and attempts to prove the claim or defense by disclosing
or describing an attorney client communication.").

1 4. **The "Cooperation Clause" Does Not Apply**

2 The insurers halfheartedly argue that the "cooperation clauses" found in certain of the
3 insurance policies at issue somehow destroy PSE's discovery privileges in this case. Insurers' Mem.
4 at 6. Although they purport to rely on such clauses as a basis for destroying PSE's discovery
5 privileges, the insurers have not made part of the record an example of such a clause. A typical
6 "cooperation clause" found in one of the insurance policies in this case provides as follows:
7
8
9
10

11 **Assistance and Cooperation of the Insured.** The insured shall cooperate with the company
12 and, upon the company's request, shall attend hearings and trials and shall assist in effecting
13 settlements, securing and giving evidence, obtaining the attendance of witnesses and in the
14 conduct of suits. The insured shall not, except at his own cost, voluntarily make any payment,
15 assume any obligation or incur any expense other than for such immediate medical and
16 surgical relief to others as shall be imperative at the time of the accident.
17
18
19
20

21 Cordell Dec. Ex. B.
22

23 The plain text of the "cooperation clause" makes clear that the so-called duty to cooperate is
24 limited to cases in which the insurer is engaged in defending its policyholder against a third-party
25 claim. These provisions simply do not purport to affect a waiver of anyone's discovery privileges in
26 coverage litigation. Surely if the insurers had intended to impose a sweeping and prospective waiver
27 of the policyholder's privilege rights, they could and should have done so in a clear and unambiguous
28 manner. The "cooperation clause" does not come close to doing so.
29
30
31
32
33
34

35 Not surprisingly, then, the overwhelming majority of courts that have considered this
36 argument have found that such "cooperation clauses" have no bearing on the insured's privilege
37 rights. See, e.g., Bituminous Cas. Corp., 140 F.R.D. at 386-87; Rockwell, 26 Cal. App. 4th at 1265-66
38 (rejecting "cooperation clause" argument and citing multiple cases holding the same). The Court
39 likewise should reject this claim.
40
41
42
43
44
45
46
47

1 **5. The Defendants Have Not Demonstrated “Substantial Need,” and No Such**
2 **Exception Applies to Opinion Work Product**

3
4 The insurers claim that they are entitled to invade PSE’s litigation work-product under the
5
6 “substantial need” exception to the work-product doctrine. Washington’s work-product rule, CR
7
8 26(b)(4), provides that a party may obtain discovery of protected work-product “only upon a showing
9
10 that the party seeking discovery has substantial need of the materials in the preparation of his case
11
12 and that he is unable without undue hardship to obtain the substantial equivalent of the materials by
13
14 other means.”

15
16 The insurers’ “substantial need” claim fails on two fronts. First, as described above, the
17
18 insurers have obtained in discovery a massive volume of documents that cover precisely the topics
19
20 that they claim to be the subject of the protected work-product documents. Second, PSE has made no
21
22 work-product claim as to “raw data” from the sites—i.e., the results of soil and groundwater sampling
23
24 and the like—which is the only portion of PSE’s protected work-product that the insurers conceivably
25
26 could not create on their own and at their own expense. Virtually all of the withheld documents, then,
27
28 constitute or reflect the “mental impressions, conclusions, opinions, or legal theories” of PSE or its
29
30 representatives. As to this “opinion work-product,” the insurers have not come close to proving that
31
32 the materials sought are “central to [their] claim or defense[,]” the stringent requirements for need-
33
34 based access. Pappas, 114 Wn.2d at 212; see also CR 26(b)(4) (“the court shall protect against
35
36 disclosure” of opinion work product). Accordingly, the Court should reject the insurers’
37
38 inappropriate invocation of the “substantial need” exception.

39
40 **C. The Joint-Defense Agreements Protect Independently Privileged Documents**
41 **From Discovery by Strangers to the Joint Defense Groups**

42
43 The insurers mischaracterize the joint-defense agreements as “confidentiality” agreements and
44
45 argue that PSE is withholding otherwise-unprivileged documents on grounds of a contractual
46
47 confidentiality obligation. This is not the case. PSE has not withheld any document at issue pursuant
merely to a confidentiality promise embodied in a private agreement. Instead, PSE has simply

1 applied the joint-defense agreements to preserve the pre-existing work-product protection in
2 documents that were shared by one member of the joint-defense group with the other members.
3

4 Washington law recognizes this effect of the joint-defense relationship. E.g., Cummings,
5 supra, 16 Wn.2d at 96. Although that relationship in and of itself does not create a discovery
6 privilege, the common interest among the group members, and their collective pledge to maintain
7 documents confidential as against non-members, prevents the waiver of work-product protection that
8 might otherwise occur when privileged documents are communicated among the parties. This is
9 precisely what PSE has done pursuant to those agreements, and this aspect of the Motion thus should
10 be denied.
11

12 **D. The Documents in Underlying Defense Counsel's Files Are Either Clearly**
13 **Privileged or Duplicative of Documents Already Produced**
14

15 The documents located in the Graham & James Files virtually all fall into two categories: (1)
16 documents whose privileged nature cannot be seriously disputed; and (2) documents that the insurers
17 have already received in discovery. Accordingly, the Court should uphold PSE's objection to going
18 through the empty—yet monumentally expensive—task of reviewing those files.
19

20 Nor should PSE have to bear the pointless burden of creating a document-by-document
21 privilege log for the Graham & James Files. While privilege logs are a useful means of making the
22 prima facie showing required to withhold documents, that showing can also be made in other ways.
23 E.g., In re Grand Jury Investigation, 974 F.2d 1068, 1071 (9th Cir. 1992) ("We have previously
24 recognized a number of means of sufficiently establishing the privilege, one of which is the privilege
25 log approach." (emphasis added)). Although no Washington authority clearly addresses this issue,
26 the comment to the 1993 Amendments to Fed. R. Civ. P. 26(b) confirms that document-by-document
27 privilege logs are not required in every case:
28

29 The rule does not attempt to define for each case what information must be provided
30 when a party asserts a claim of privilege or work product protection. Details
31 concerning time, persons, general subject matter, etc., may be appropriate if only a few
32

1 items are withheld, but may be unduly burdensome when voluminous documents are
2 claimed to be privileged or protected, particularly if the items can be described by
3 categories.
4

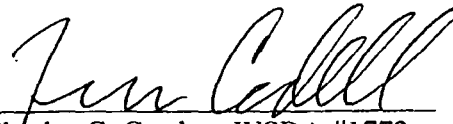
5 Accordingly, PSE should be permitted to make such a categorical claim of privilege with
6 respect to the Graham & James Files.
7

8
9
10 **VI. CONCLUSION**

11 For the foregoing reasons, PSE respectfully urges the Court to uphold PSE's narrow exercise
12 of the work-product doctrine and deny the Motion to Compel.
13

14 DATED this 3rd day of May, 1999.
15
16
17

18 **GORDON MURRAY TILDEN**

19
20 By 
21 Charles C. Gordon, WSBA #1773
22 James R. Murray, WSBA #25263
23 Franklin D. Cordell, WSBA #26392
24
25
26
27

28 **GRAHAM & JAMES LLP/RIDDELL WILLIAMS P.S.**
29 David M. Brenner, WSBA #14278
30
31

32 Attorneys for Puget Sound Energy, Inc.
33
34
35
36
37
38
39
40
41
42
43
44
45
46
47

1 CURT H. FEIG
2 COZEN AND O'CONNOR
3 5200 Washington Mutual Tower
4 1201 Third Avenue
5 Seattle, Washington 98101-3033
6 Telephone: (206) 340-1000
7 Attorneys for Defendant
8 The Home Insurance Company

FILED
JUN -6 PM
THE HONORABLE PHILIP HUBBARD
Oral Argument Requested
Motion Date: 5/7/99

6 IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
7 IN AND FOR THE COUNTY OF KING

8 PUGET SOUND ENERGY, INC.,

9 Plaintiff,

10 v.

11 ALBA GENERAL INSURANCE COMPANY,
12 et al.

13 Defendants.

No. 97-2-29050-3 SEA

CERTAIN DEFENDANTS'¹ REPLY
TO PUGET SOUND ENERGY'S
OPPOSITION TO MOTION TO
COMPEL PRODUCTION OF
CERTAIN CATEGORIES OF
DOCUMENTS WITHHELD BY
PUGET SOUND ENERGY

14
15 **I. FACTUAL BACKGROUND**

16 Puget Sound Energy's Opposition to Certain Defendant's Motion to Compel fails to
17 address the true nature of this action or of defendants' discovery requests. The facts
18 underlying this coverage action are unique and present unique issues for discovery. As
19 demonstrated by Certain Defendant's Motion for Partial Summary Judgment, attached hereto
20 as Exhibit A, and filed with this Court, an underlying definitive issue is whether Puget Sound
21 Energy ("PSE") has any actual ripe claims for coverage from its insurers. At this time, any
22 relief in the form of damages which PSE is seeking is utterly without foundation. By seeking,
23 under the guise of work-product protection, to prevent discovery of the information requested
24 by defendants, plaintiff seeks to preclude defendants' access to the very materials that would
25

26 ¹ The following defendants join in this Reply: Underwriters at Lloyds and Westport Insurance Corp.

CERTAIN DEFENDANTS' REPLY TO PUGET SOUND ENERGY'S
OPPOSITION TO MOTION TO COMPEL - 1

LAW OFFICES OF
COZEN AND O'CONNOR
A PROFESSIONAL CORPORATION
SUITE 5200
WASHINGTON MUTUAL TOWER
1201 THIRD AVENUE
SEATTLE, WASHINGTON 98101-3033
(206) 340-1000

ORIGINAL

1 support, or, perhaps, refute, plaintiff's claims. By bringing this
2 Defendants seek to discover whether PSE has any basis to claim that any of the
3 could have a current obligation to indemnify PSE in connection with the sites at issue in this
4 lawsuit. Far from attempting to impose undue expense on PSE, defendants simply seek those
5 documents that either support or undermine PSE's claims in this matter.

6 **II. ARGUMENT**

7 **A. Defendants Do Not Seek to Impose Undue Costs Upon PSE.**

8 As an initial matter, contrary to PSE's assertions, Certain Defendants do not seek
9 discovery of all the Graham & James attorney working files. The entire files have not been
10 requested nor were they specifically a part of Certain Defendants' Motion to Compel. Certain
11 Defendants acknowledge that the majority of the non-privileged portions of these files have
12 likely been produced. Certain Defendants do not believe it is necessary, or at all conducive to
13 moving this litigation forward, to develop a voluminous privilege log regarding these files.
14 Certain Defendants only seek the non-privileged communications contained in these files,
15 including those communications between PSE's counsel and other PLPs, PRPs or third-party
16 consultants.

17 **B. Washington Courts Have Recognized that the Work Product Protection** 18 **Does Not Apply to Documents Which Support the Basis For and/or Extent** **of the Insurers' Liability.**

19 Certain Defendants are entitled to those documents that go directly to the issue of
20 whether PSE has any basis for the claims which it presents in this action. PSE has admitted
21 in its SEC disclosures and requests for admissions that it has received insurance proceeds that
22 exceed its total past and projected future environmental losses for the Everett, A-Street, Gas
23 Works Park, and Chehalis claims. See Certain Defendants' Motion for Partial Summary
24 Judgment, Exhibit A. According to PSE's own representations it has already been made
25 whole. If PSE has no outstanding past or future liabilities, it follows Certain Defendants have
26 no liabilities to PSE for coverage. Any documents which relate directly to establishing

1 whether or not PSE has any liabilities implicating coverage under defendants' policies of
2 insurance or, if so, the extent of these alleged liabilities, are discoverable under Washington
3 law. To the extent PSE has taken positions regarding its allocated share of cleanup costs with
4 other PRPs or PLPs at the sites at issue, this information would go to the very heart of PSE's
5 claims against the insurers that it has liability for which it is entitled to coverage. Similarly, to
6 the extent PSE relies on reports of consultants in an effort to minimize its liability at the sites,
7 this information would be crucial to defendants in responding to plaintiff's current claims.

8 While PSE has produced pages and pages of historical information about the operation
9 of the sites at issue, PSE has provided almost *no* information, outside of raw investigative
10 data, to support its claims that it currently has liabilities for which it is entitled to insurance
11 coverage. Clearly the insurers are entitled to the documents which confirm that the alleged
12 liabilities upon which PSE bases its claims are not "bogus." See Aluminum Company of
13 America v. Admiral Ins. Co., et al., No. 92-2-28065-5 (King County) (Order on Work Product
14 Issues, dated Sept. 16, 1994). Those documents withheld by PSE on the basis of alleged work
15 product protection that pertain to the extent of PSE's potential liabilities have been placed "at
16 issue" by PSE itself and are not merely "relevant."²

17 Judge Learned specifically addressed the issue of whether the work product protection
18 applies to documents prepared in anticipation of a third-party environmental action for which
19 the insured was seeking coverage. Id. The court acknowledged that parties must be able to
20 discuss among themselves the strengths and weaknesses of their legal situation without fear of
21 it being used against them in later litigation. However, even with this overarching
22 fundamental consideration, the court held that the insurers were entitled to materials prepared
23 in anticipation of that litigation to confirm that the asserted liabilities "were not bogus" or to
24 determine the extent of the liabilities.

25 _____
26 ² PSE's discussion in footnote 2 of its opposition is misplaced as both cases cited concern the waiver of attorney
client privilege, an issue not raised in Certain Defendants' motion.

1 Quite simply put, Plaintiffs cannot present a "bill" to Defendants
2 without allowing scrutiny of the documents prepared in
anticipation of, preparation of and/or defense of the "bill."

3 Id. at 5. Judge Learned noted that the principles behind the work product doctrine are not
4 offended by discovery of these documents prepared in anticipation of litigation. Similar to
5 those documents sought in Aluminum Company, the documents sought here are not those
6 prepared in anticipation of litigation with the insurers, nor are Certain Defendants seeking
7 those documents protected by the attorney-client privilege.

8 PSE also claims in error that if Certain Defendants are provided with the documents
9 they are entitled, the Department of Ecology and the U.S. Environmental Protection Agency
10 may also attempt to compel discovery of these documents, potentially causing prejudice to
11 PSE. In Georgia-Pacific Corp. v. Aetna Cas. & Sur. Co., et al., slip op. No. 92-2-21950-6
12 (Wash. Sup. Ct. July 1, 1994), Judge Alsdorf noted that a production of documents withheld
13 on work product relating to the underlying claims would *not* constitute a waiver of the work
14 product protection with respect to governmental agencies in those underlying actions.
15 Moreover, Certain Defendants point out that all parties have signed a Protective Order in this
16 matter, attached hereto as Exhibit B.³ PSE's suggestion of potential prejudice from the
17 discovery sought by Certain Defendants is simply unfounded in this action.

18 **C. PSE Has Not Produced Documents Which Support its Claims of Coverage**
19 **and Certain Defendants' Have a Substantial Need for Any Such**
Documentation.

20 PSE claims that Certain Defendants are contesting only the reasonableness of PSE's
21 actions and costs in the underlying action. Information concerning the reasonableness of
22 PSE's actions and costs is not what is sought by Certain Defendants, rather Certain Defendants
23 seek, and are entitled to, information about whether PSE has any current liabilities that would
24 implicate coverage in this action.

25 _____
26 ³ The Stipulated Protective Order has been submitted to the court for entry with all parties' signatures. The parties
are awaiting the Court's entry of the order.

1 The documents sought include communications which may indicate what, if any, PSE's
2 share or allocation of cleanup costs is. This goes directly to the extent of PSE's liability, and
3 in turn, Certain Defendants' potential indemnity obligation. Documents relating to this issue
4 may include communications from consultants regarding the extent and scope of PSE's past
5 and future liabilities at the sites. These documents contain original non-privileged information
6 that is not available from any other source. Thus, even if the documents do fall under the
7 work product protection, which Certain Defendants do not concede, they clearly have been
8 placed at issue by PSE, and Certain Defendants have a substantial need for this information.

9 **D. Joint Defense Agreements Are Valid but Cannot Create a Work Product**
10 **Protection for Documents which Either are Not Privileged or Protected or**
11 **Fall Within an Exception to the Work Product Doctrine.**

12 As PSE admits, and Certain Defendants agree, a joint-defense relationship does not
13 itself create a discovery privilege. Documents which are not otherwise protected work
14 product, including those falling within exceptions to work product protection, cannot be
15 immunized from discovery by throwing a private contractual confidentiality agreement over
16 the breadth of all documents "generated or produced in connection with" that agreement. PSE
17 seeks to withhold documents which are otherwise not protected by the work product doctrine
18 by cloaking these documents under contractual confidentiality provisions.

19 For example, one confidentiality provision states that "all confidential information
20 developed, generated, or otherwise produced with this Agreement is work product in
21 anticipation of litigation." See, Funding and Participation Agreement For The Thea Foss and
22 Wheeler-Osgood Waterways Remedial Design Study, attached as Exhibit H to the April 19,
23 1999 Declaration of Curt H. Feig filed in support of Certain Defendants' Motion to Compel.
24 PSE applies this provision to all communications, even if the communications do not fall
25 within the confines of the work product doctrine, apparently relying on the "confidential"
26 nature of the information.

Many of the documents apparently withheld by PSE simply do not fall within the

1 scope of the work product doctrine at all. These documents include, for example: (1)
2 documents reflecting non-privileged communications between other parties or consultants; (2)
3 documents reflecting communications between attorneys for PSE and other PLPs or PRPs,
4 whose interests are actually adverse to PSE's; and, (3) documents reflecting communications
5 between PSE's attorneys and third party consultants that go to the factual bases for the
6 positions PSE has taken with agencies or other PRPs or PLPs. These documents are not
7 protected work product.⁴

8 PSE cannot create a private contractual agreement to protect documents which are not
9 protected work product and which are highly relevant to the claims for which PSE seeks
10 coverage.⁵

11 III. CONCLUSION

12 For all of the foregoing reasons, the qualified work product protection objections relied
13 on by PSE as a basis for withholding certain categories of documents sought by Certain
14 Defendants in this motion are not applicable. PSE should be ordered to produce the
15 documents forthwith.

16 DATED this 6th day of May, 1999.

17 COZEN AND O'CONNOR

18 By: 

19 Curt H. Feig
20 WSBA No. 19890
21 Attorneys for the Defendant The Home
Insurance Company

22 L:\66485\PLEAD\REPCOM.CHF

23 ⁴ Where members of a joint defense agreement communicate regarding issues of common interest to their joint
24 defense, the sharing of information with their co-parties in interest implies no waiver of the privilege. However, where
25 the parties interests are adverse, such as they invariably are where PRPs are contesting or determining allocation or cost-
sharing issues, the additional joint defense "common interest" privilege no longer applies.

26 ⁵ Curiously, PSE does not even attempt to discuss or distinguish Grumman Aerospace Corp. v. Titanium Metals Corp.
of America, 91 F.R.D. 84 (E.D.N.Y. 1981), a case directly on point.

CERTIFICATE OF SERVICE
Under penalty of perjury under
the laws of the state of Washington that
on this day I faxed, (mailed) served a copy
of this document to all counsel of record.

Dated: 4/4/99 @ Seattle, WA

ORIGINAL
Honorable Phillip Hubbard
Hearing Date: 6/4/99
Hearing Time: 11:00 a.m.
Moving Party: Def. Century Indemnity
Trial Date: 4/10/00

SUPERIOR COURT OF THE STATE OF WASHINGTON
FOR KING COUNTY

PUGET SOUND ENERGY, INC.,) NO. 97-2-29050-3SEA
)
Plaintiff,) CERTAIN DEFENDANTS' MOTION FOR
) PARTIAL SUMMARY JUDGMENT AS TO
v.) EVERETT, A-STREET, GAS WORKS PARK
) AND CHEHALIS SITES
)
ALBA GENERAL INSURANCE) ORAL ARGUMENT REQUESTED
COMPANY; et. al.)
)
Defendants.)

I. RELIEF REQUESTED

Defendant Century Indemnity Company ("Century") and certain other defendants seek
dismissal of Plaintiff Puget Sound Energy's ("PSE") claims for declaratory relief and damages at the
Everett, A-Street, Gas Works Park and Chehalis sites, as set out in PSE's Complaint.

II. STATEMENT OF FACTS

As admitted by PSE, PSE may only recover damages from its insurance carriers, "so long as
PSE's total insurance recoveries do not exceed its total liabilities and losses." PSE's Second
Supplemental Responses to First-Party Defendants' First Set of Interrogatories. Answer 4, p. 9,
attached as Exhibit 1 to the Declaration of Lind Stapley. PSE, however, has already received insurance
proceeds that exceed its total past and projected future environmental liabilities and losses at the
Everett, A-Street, Gas Works Park and Chehalis claims. To wit. PSE has admitted the following:

CERTAIN DEFENDANTS' MOTION FOR PARTIAL SUMMARY
JUDGMENT AS TO EVERETT, A-STREET, GAS WORKS PARK
AND CHEHALIS SITES - I

pse/p-msj.ls

0217
SOHA & LANG, P.S.
ATTORNEYS AT LAW
1210 NORTON BUILDING
801 SECOND AVENUE
SEATTLE, WASHINGTON 98104
(206) 624-1800/FAX (206) 624-3585

AltinoEPA 000091

1 **REQUEST FOR ADMISSION NO. 1:** Admit that the following
2 statement was made in PSE's Form 10-K Annual Report pursuant to the
3 Securities Exchange Act of 1934, for the fiscal year ending December 31,
4 1997:

5 Five former WNG or predecessor companies manufactured gas
6 plant ("MGP") sites are currently undergoing investigation,
7 remedial actions or monitoring actions relating to environmental
8 contamination: 1) Everett, Washington; 2) "Gas Works Park" in
9 Seattle, Washington; 3) "Tacoma 22nd and A St." Site in Tacoma,
10 Washington; 4) Chehalis, Washington; and 5) the "Tideflats" area
11 of Tacoma, Washington. Costs incurred to date total
12 approximately \$48.0 million and currently estimated future
13 remediation costs are approximately \$7.7 million. To date, the
14 Company has recovered approximately \$55.7 million from
15 insurance carriers.

16 **ANSWER:** Admitted.

17 **REQUEST FOR ADMISSION NO. 2:** Admit that by December 31,
18 1997, PSE had incurred approximately \$48 million in costs for
19 investigation, remedial actions or monitoring actions relating to
20 environmental contamination at the following manufactured gas plant
21 sites: 1) Everett, Washington; 2) "Gas Works Park" in Seattle,
22 Washington; 3) "Tacoma 22nd and A St." Site in Tacoma, Washington;
23 4) Chehalis, Washington; and 5) the "Tideflats" area of Tacoma,
24 Washington.

25 **ANSWER:** Denied. PSE admits that, as of December 31, 1997, it had
26 incurred approximately \$40.6 million in costs for investigation, remedial
actions or monitoring action relating to environmental contamination at
the listed sites. The \$48 million figure cited in PSE's form 10-K Annual
Report for the year ending December 31, 1997 included the costs of
insurance coverage litigation and the costs of pursuing recoveries from
other potentially liable or responsible parties.

REQUEST FOR ADMISSION NO. 3: Admit that by December 31,
1997, PSE estimated future remediation costs to be approximately \$7.7
million for actions relating to environmental contamination at the
following manufactured gas plant sites: 1) Everett, Washington; 2) "Gas
Works Park" in Seattle, Washington; 3) "Tacoma 22nd and A St." Site in
Tacoma, Washington; 4) Chehalis, Washington; and 5) the "Tideflats"
area of Tacoma, Washington.

1 **ANSWER:** Admitted.

2 **REQUEST FOR ADMISSION NO. 4:** Admit that by December 31, 1997,
3 PSE had recovered approximately \$55.7 million from insurance carriers for
4 actions relating to environmental contamination at the following manufactured
5 gas plant sites: 1) Everett, Washington; 2) "Gas Works Park" in Seattle,
6 Washington; 3) "Tacoma 22nd and A St." Site in Tacoma, Washington; 4)
7 Chehalis, Washington; and 5) the "Tideflats" area of Tacoma, Washington.

8 **ANSWER:** Denied. PSE admits that as of December 31, 1997, PSE had
9 recovered approximately \$55.1 million in compensation from all sources,
10 including insurance carriers and others, in connection with actions relating to
11 environmental contamination at sites including the listed sites. The total sum of
12 \$55.1 million included approximately \$47.6 million from insurance carriers,
13 approximately \$5.9 million from non-insurer third parties that were liable to PSE
14 in contribution and/or indemnity, and approximately \$1.6 million in the form of a
15 tax refund that resulted from the expenses associated with the listed sites.

16 See Exhibits 2 and 3 to the Declaration of Lind Stapley. PSE has also recently disclosed the following
17 in its 1998 10-K Annual Report, issued March 17, 1999:

18 **GAS SITES:** Five former WNG or predecessor companies manufactured gas
19 plant ("MGP") sites are currently undergoing investigation, remedial actions or
20 monitoring actions relating to environmental contamination: 1) Everett,
21 Washington; 2) "Gas Works Park" in Seattle, Washington; 3) "Tacoma 22nd and
22 A St." Site in Tacoma, Washington; 4) Chehalis, Washington; and 5) the
23 "Tideflats" area of Tacoma, Washington. Legal and remedial costs incurred to
24 date total approximately \$50.9 million and currently estimated future remediation
25 costs are approximately \$7.0 million. Work at both the Chehalis and Tideflats
26 sites is substantially completed. To date, the Company has recovered
 approximately \$59 million from insurance carriers and other third parties. Based
 on all known facts and analyses, the Company believes it is not likely that the
 identified environmental liabilities will result in a material adverse impact on the
 Company's financial position, operating results or cash flow trends.

 See Exhibit 4 to the Declaration of Lind Stapley. Based on this disclosure, PSE has recovered an
 additional \$1.1 million over its stated past and future costs projections at the listed sites (\$59 million
 recovered minus \$50.9 million past and \$7.0 million future costs). It is also significant that remediation
 at the Chehalis and Tideflats sites is substantially completed.

1 Even with an allocated surplus exceeding \$7 million for "future costs", plus an additional
2 recovery of \$1.1 million, PSE nevertheless claims that it is entitled to additional insurance recoveries at
3 the exact same sites for identical environmental claims from the first and third party insurance provided
4 by Century and certain defendants¹.

5 **III. STATEMENT OF THE ISSUE**

6 Whether Washington law and public policy require the dismissal of PSE's claims against certain
7 defendants where PSE has already received compensation exceeding past and future costs of
8 investigation, remediation and monitoring relating to environmental contamination at the Everett, A-
9 Street, Gas Works Park and Chehalis sites.
10

11 **IV. EVIDENCE RELIED ON**

12 The Declaration of Lind Stapley and the records and other documents attached thereto.

13 **V. ARGUMENT**

14 It is the public policy of this State that insurance is to indemnify or compensate an insured for
15 loss, not to enrich the insured at the expense of other premium payers. Enrichment, however, is exactly
16 the remedy PSE seeks against certain defendants in this litigation. PSE has already admitted in its SEC
17 disclosures and requests for admission that it has received full compensation, plus a surplus, for past
18 and future investigation and remediation expenses at the Everett, 22nd and A Street, Gas Works Park
19 and Chehalis sites. Simply stated, PSE has been made whole—there is nothing left to litigate against its
20 insurers. Accordingly, there is no justiciable controversy or damages that warrant further prosecution.
21 Partial Summary Judgment dismissing these claims against Century and the moving defendants is thus
22 proper.
23
24
25

26 ¹ The coverages of Century and moving defendants are identified in PSE's Complaint.

1 A. Declaratory Judgment Standard.

2 The Washington Supreme Court has repeatedly held that, unless issues of broad public
3 importance are involved, a trial court lacks subject matter jurisdiction under the Declaratory Judgment
4 Act absent a "justiciable controversy". See, e.g., *Diversified Industries Devel. Corp. v. Ripley*, 82
5 Wn.2d 811, 814-15, 514 P.2d 137 (1973). A "justiciable controversy" in this context is:

6 (1) . . . an actual, present and existing dispute, or the mature seeds of one,
7 as distinguished from a possible, dormant, hypothetical, speculative, or
8 moot disagreement, (2) between parties having genuine and opposing
9 interests, (3) which involves interests that must be direct and substantial,
10 rather than potential, theoretical, abstract or academic, and (4) a judicial
11 determination of which will be final and conclusive. [citations omitted]
These elements must coalesce, otherwise the court steps into the
prohibited area of advisory opinions.

12 *Id.* at 815; *Walker v. Munro*, 124 Wn.2d 402, 411, 879 P.2d 920 (1994). These four criteria
13 must be satisfied or else the case must be dismissed. *Lawson v. Washington*, 107 Wn.2d 444,
14 460, 730 P.2d 1308 (1986). The Washington Court of Appeals applied these standards to
15 dismiss speculative claims within an environmental coverage context in *Snokist v. Washington*
16 *Ins.*, 83 Wn. App. 496, 501, 922 P.2d 821 (1996) ("Snokist's and the individual plaintiff's legal
17 obligation for the costs of cleanup is speculative and therefore nonjusticiable.").

18 PSE admits that it has fully recovered insurance proceeds for past environmental costs at
19 the sites at issue, and has obtained and allocated additional insurance funds exceeding all
20 projected future cleanup costs at these same sites. Accordingly, there are no compensable
21 damages against the moving defendants, and no corresponding actual, present or existing
22 dispute, that creates a justiciable controversy. Dismissal is thus mandated. *Snokist*. 83 Wn.
23 App. at 502.
24
25
26

1 B. Washington Public Policy Precludes PSE's Attempts at a "Double Recovery".

2 It has long been the public policy of Washington to preclude "double recoveries." *See Platts v.*
3 *Arney*, 50 Wn.2d 42, 309 P.2d 372 (1957); *Brink v. Griffith*, 65 Wn.2d 253, 259, 396 P.2d 793 (1964);
4 *Barney v. Safeco Ins. Co.*, 73 Wn.App. 426, 428, 869 P.2d 1093 (1994). PSE's admission that it may
5 only recover damages from its insurance carriers, "so long as PSE's total insurance recoveries do not
6 exceed its total liabilities and losses[.]" concedes the point.

7 This principle has direct application to the insurance policies at issue. By definition, the
8 purpose of insurance is to indemnify insureds against loss—not to finance corporate or individual gain.
9 As well enunciated by Justice Madsen:

10 A fundamental principle of insurance law is that opportunities for net
11 gain to an insured through the receipt of insurance proceeds exceeding a
12 loss should be regarded as inimical to the public interest. In other words,
13 insurance arrangements are structured to provide funds to offset a loss
14 either wholly or partly, and the payments made by an insurer generally
15 are limited to an amount that does not exceed what is required to restore
16 the insured to a condition relatively equivalent to that which existed
17 before the loss occurred. The concept that insurance contracts shall
18 confer a benefit no greater in value than the loss suffered by an insured is
19 usually referred to as the "principle of indemnity."

20 *Gossett v. Farmers Ins. Co.*, 133 Wn.2d 954, 968, 948 P.2d 1264 (1997); *see also* Keeton & Widiss,
21 *Insurance Law*, sec. 3.1 at 135 (Student Ed., 1988).

22 Codifying this public policy, RCW 48.27.010 prohibits the procurement of first-party insurance
23 for more than the fair market value of the property, or for more than the insured's insurable interest, as
24 determined at the effective date of the insurance.² Similarly, in the context of personal auto coverage,
25 Washington has consistently stated the rule that injured plaintiffs are not entitled to double recoveries.
26 *See Brown v. Snohomish County Physicians Corp.*, 120 Wn.2d 747, 755, 845 P.2d 334 (1993);

² A limited statutory exception permitting replacement cost coverage appears in RCW 48.27.020.

1 *Thiringer v. American Motors Ins. Co.*, 91 Wn.2d 215, 588 P.2d 191 (1978). In *Thiringer*, the
2 Washington Supreme Court articulated the principle that "a party suffering compensable injury is
3 entitled to be made whole but should not be allowed to duplicate his recovery." *Id.*, 91 Wn.2d at 220.
4 Although *Thiringer* involved subrogation against an at-fault party following payment of first-party
5 benefits to an injured insured, the Supreme Court has expressly stated that, "[t]he key factor" in
6 *Thiringer* was not subrogation principles or premiums, but rather, "the presence or absence of double
7 recovery." *Brown*, 120 Wn.2d at 755; *Keenan v. Industrial Indem. Ins. Co.*, 108 Wn.2d 314, 319, 738
8 P.2d 270 (1987).

9
10 Taking conflicting positions, PSE now apparently alleges that it has compensable damages
11 against the moving defendants, while at the same time disclosing to the SEC and its shareholders that it
12 has recouped all past costs relating to environmental contamination at the Everett, Gas Works Park,
13 Tacoma 22nd and A Street, Chehalis and Tacoma "Tideflats" sites, and has an additional \$7 million
14 surplus (or \$8.1 million surplus, based on its 1998 10-K Report) in settlement funds allocated to future
15 investigation and remediation costs. PSE's SEC disclosures and responses to requests for admission in
16 this lawsuit make clear that PSE's recovery has exceeded both past and future environmental damages
17 at the noted sites. Even PSE's attorney's fees have been paid. Nonetheless, PSE seeks more money for
18 the same damages at the same sites from Century and other Defendants. PSE's attempt smacks of a
19 money making venture, not a legitimate insurance recovery (i.e., indemnity) action. The strong public
20 policy of Washington against double recovery precludes such a scheme.

21
22 PSE admits it has been paid in full for the noted claims, and recovered additional proceeds for
23 all projected future cleanup costs. There are no more damages left to litigate, and thus no justiciable
24
25
26

1 controversy. Partial summary judgment, dismissing PSE's claims at the Everett, Chehalis, Tacoma
2 22nd and A Street, and Gas Works Park sites is thus proper. *Snokist*, 83 Wn. App. at 502.

3 C. PSE's SEC Disclosures Support Dismissal.

4 It is significant that PSE has disclosed the receipt of excess recoveries and their allocation to
5 past and future the environmental remediation costs at the sites at issue in both its 1997 and 1998 10-K
6 Reports. These representations go beyond mere admissions of fact--they are statements that require the
7 utmost credibility in order to protect the interests of investors, and may not be manipulated by PSE to
8 suit its needs in this legal setting.

10 The purpose of the 1934 Securities Act is to "defer fraud and manipulative practices in the
11 securities markets, and to ensure full disclosure of information material to investment decisions."
12 *Randall v. Loftsgaarden*, 478 U.S. 647, 664 (1986). Underlying the adoption of extensive disclosure
13 requirements was this legislative philosophy: "There cannot be honest markets without honest
14 publicity. Manipulation and dishonest practices of the market place thrive upon mystery and secrecy."
15 *Basic Inc. v. Levison*, 485 U.S. 224, 230 (1988) (quoting H. R. Rep. No. 1383, 73d Cong., 2d Sess. 11
16 (1934)). Similarly, the U.S. Supreme Court has repeatedly described the fundamental purpose of the
17 1934 Act "as implementing a philosophy of full disclosure." *Basic*, 485 U.S. at 230, citing *Santa Fe*
18 *Indus., Inc. v. Green*, 430 U.S. 462, 477-478 (1977). The Supreme Court has stated:

20 The importance of accurate and complete disclosure to the integrity of the
21 securities markets cannot be overemphasized. To the extent that investors cannot
22 rely upon the accuracy and completeness of issuer statements, they will be less
23 likely to invest, thereby reducing the liquidity of the securities markets to the
24 detriment of investors and issuers alike.

1 Basic, 485 U.S. at 235 (citing *In re Carnation Co.*, Exchange Act Release No. 22214, 33 SEC Docket
2 1025, 1030 (1985)).

3 PSE's 1997 and 1998 10-K disclosures of the settlement of past and future environmental
4 cleanup expenses fall within the parameters of information material to investment decisions. Investors
5 are relying on PSE's representation that it has received and allocated funds for specific past
6 environmental liabilities at the listed sites, and the statement that:

7
8 Based on all known facts and analyses, the Company believes it is not likely that
9 the identified environmental liabilities will result in a material adverse impact on
the Company's financial position, operating results or cash flow trends.

10 Exhibit 4 to the Declaration of Lind Stapley. Waffling on stated future contingencies in this litigation,
11 for which PSE has represented it has received full payment, violates the sacred principle of full and fair
12 disclosure.

13 Surely, PSE's SEC disclosures allocating insurance proceeds to fixed future expenses *must* be
14 credible and based on information derived from sound economic and accounting analysis. If not, PSE
15 is exposing its shareholders to undisclosed liabilities and misrepresenting the use of insurance
16 recoveries. Estimates of additional, contingent damages beyond those disclosed to the SEC would
17 amount to pure speculation--not a justiciable controversy. Any attempt by PSE to play shell games
18 with insurance allocations would not be sanctioned by its investors or the SEC, nor should it be
19 condoned by this Court.
20
21
22
23
24
25
26

1 Despite Washington law on double recoveries and the validity of its SEC disclosures, PSE may
2 cites its ruling in *Pederson Fryer Farms v. Transamerica Ins. Co.*, 83 Wn.App. 432, 922 P.2d 126
3 (1996), *rev. denied*, 131 Wn.2d 1010, 932 P.2d 1255 (1997), as justification for its pursuit of additional
4 gain. *Pederson*, however, mandates just the opposite. In *Pederson*, the Court of Appeals recognized
5 the validity of a "double recovery" offset, but found that Transamerica had failed to "demonstrate what
6 part, if any, of a prior settlement was attributable to cleanup costs." *Id.*, 83 Wn.App. at 452. Thus, no
7 showing of double recovery was made. *Id.*

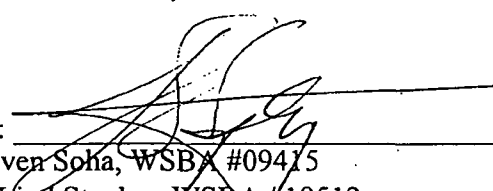
8
9 PSE's own 10-K disclosures, however, "demonstrate" that its has already attributed its prior
10 settlements to past and future clean up costs for specific sites, plus attorney's fees. PSE has disclosed
11 to its shareholders and the SEC that its insurance recoveries have fully paid for investigation, remedial
12 actions or monitoring actions relating to environmental contamination at the Everett, Gas Works Park,
13 Tacoma 22nd and A St., Chehalis and the "Tideflats" sites. Moreover, PSE has an allocated surplus
14 fund for its future investigation and remediation costs at these same sites. The allocations have been
15 fixed by PSE, as stated in its 10-K statements. The provisions of *Pederson* are thus met in this
16 instance, and dictate dismissal of PSE's attempt to double its gains.
17
18
19
20
21
22
23
24
25
26

V. CONCLUSION

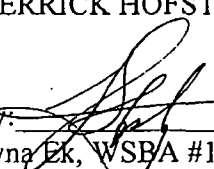
Insurance covers losses—it is not intended to enhance a firm's profitability. PSE has already received and allocated insurance funds to cover past *and future* "costs for investigation, remedial actions or monitoring actions relating to environmental contamination" at the Everett, Chehalis, Gas Works Park and Tacoma 22nd and A Street sites. As admitted by PSE, it has allocated its insurance recoveries to meet or exceed its total liabilities and losses, including attorney's fees. Having been made whole, and then some, PSE has no justiciable claim against Century or other moving defendants. Partial summary judgment, dismissing PSE's claims at the Everett, Chehalis, Gas Works Park and Tacoma 22nd and A Street sites is thus warranted.

RESPECTFULLY SUBMITTED this 14th day of April, 1999.

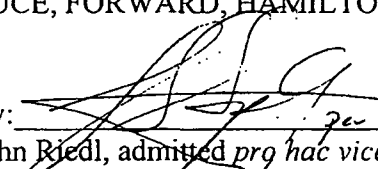
SOHA & LANG, P.S.

By: 
Steven Soha, WSBA #09415
R. Lind Stapley, WSBA #19512
Attorneys for Defendants Century Indemnity
Company, Cigna Insurance Company, Pacific
Employers Insurance Company

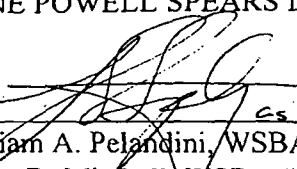
MERRICK HOFSTEDT & LINDSEY

By: 
Tyna Ek, WSBA #14332
Attorneys for Defendant Westport Insurance
Corporation

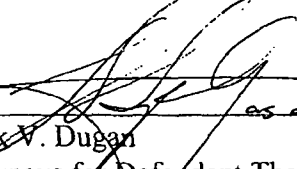
LUCE, FORWARD, HAMILTON & SCRIPPS

By: 
John Riedl, admitted pro hac vice
Cathie Childs, admitted pro hac vice
Attorneys for Defendant Westport Insurance Corp.

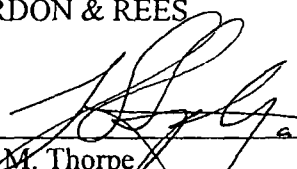
1 LANE POWELL SPEARS LUBERSKY

2
3 By:  as authorized by
4 William A. Pelandini, WSBA #11521
5 James D. Mitchell, WSBA #22180
6 Attorneys for Defendant Underwriters at Lloyd's,
7 London, London Market Companies

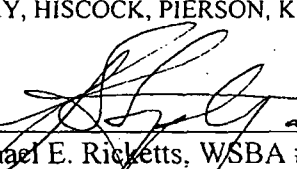
8 BLACKWELL SANDERS PEPPER MARTIN

9 By:  as authorized by
10 Mark V. Dugan
11 Attorneys for Defendant The Seven Provinces
12 Insurance Company NV

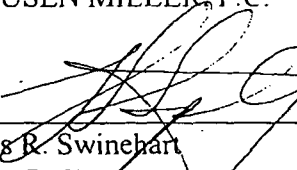
13 GORDON & REES

14 By:  as authorized by
15 Sara M. Thorpe
16 Attorneys for Defendant Centennial Insurance
17 Company

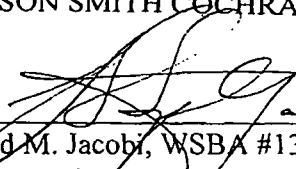
18 PEERY, HISCOCK, PIERSON, KINGMAN & PEABODY

19 By:  as authorized by
20 Michael E. Ricketts, WSBA #9387
21 Attorneys for Defendants Old Republic Insurance
22 Company, Pacific Mutual Marine Office, Inc. and
23 Employers Insurance of Wausau, a Mutual
24 Company

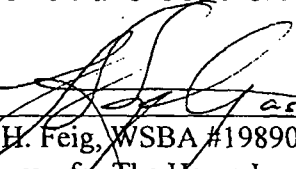
25 CLAUSEN MILLER, P.C.

26 By:  as authorized by
James R. Swinehart
Daniel R. Hoyt
Attorneys for Old Republic Insurance Company

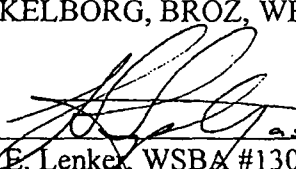
WILSON SMITH COCHRAN & DICKERSON

By:  as authorized by
David M. Jacobi, WSBA #13524
Attorneys for Defendant United States Fire
Insurance Company

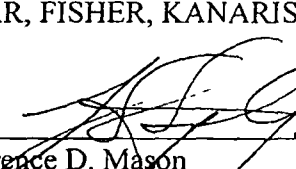
COZEN AND O'CONNOR

By:  as authorized by
Curt H. Feig, WSBA #19890
Attorneys for The Home Insurance Company

MIKKELBORG, BROZ, WELLS & FRYER

By:  as authorized by
John E. Lenker, WSBA #13067
Attorneys for Defendant Centennial Insurance
Company

DAAR, FISHER, KANARIS & VANEK, P.C.

By:  as authorized by
Lawrence D. Mason
Attorneys for Pacific Mutual Marine Office, Inc.
and Employers Insurance of Wausau, a Mutual
Company

CERTAIN DEFENDANTS' MOTION FOR PARTIAL SUMMARY
JUDGMENT AS TO EVERETT, A-STREET, GAS WORKS PARK
AND CHEHALIS SITES - 12

pse\p-msj.ls

0258

SOHA & LANG, P.S.
ATTORNEYS AT LAW
1210 NORTON BUILDING
801 SECOND AVENUE
SEATTLE, WASHINGTON 98104
(206) 624-1800/FAX (206) 624-3585

AltinoEPA 000102

FILED

98 MAR 24 PM 4: 05

KING COUNTY
SUPERIOR COURT CLERK
SEATTLE, WA.

Honorable William L. Downing

SUPERIOR COURT OF WASHINGTON
FOR KING COUNTY

PUGET SOUND ENERGY, INC.,

Plaintiff,

vs.

ALBA GENERAL INSURANCE COMPANY;
ANGLO-FRENCH INSURANCE COMPANY,
LIMITED; ANGLO-SAXON INSURANCE
ASSOCIATION, LIMITED; THE BALOISE
FIRE INSURANCE COMPANY, LIMITED;
BRITISH AVIATION INSURANCE
COMPANY, LIMITED; BRITISH NATIONAL
LIFE INSURANCE SOCIETY; CENTENNIAL
INSURANCE COMPANY; CENTURY
INDEMNITY AS SUCCESSOR-IN-INTEREST
TO INSURANCE COMPANY OF NORTH
AMERICA AND AS SUCCESSOR-IN-
INTEREST TO INDEMNITY INSURANCE
COMPANY OF NORTH AMERICA; CITY
GENERAL INSURANCE COMPANY;
CONTINENTAL CASUALTY COMPANY;
THE DOMINION INSURANCE COMPANY,
LIMITED; DRAKE INSURANCE COMPANY,
LIMITED; EDINBURGH INSURANCE
COMPANY, LIMITED; EMPLOYERS
INSURANCE COMPANY OF WAUSAU; THE
EXCESS INSURANCE COMPANY, LIMITED;
EXCESS INSURANCE COMPANY OF
AMERICA; FIDELIDADE INSURANCE
COMPANY OF LISBON; GIBBON (N.M.)

No. 97-2-29050 3 SEA

LEXINGTON INSURANCE COMPANY'S
ANSWER AND AFFIRMATIVE DEFENSES

(Caption continued on following page.)

LEXINGTON INSURANCE COMPANY'S ANSWER AND AFFIRMATIVE DEFENSES -- 1

j:\c03409\m18471\01001

ORIGINAL

GRAHAM & DUNN PC
1420 Fifth Avenue 33rd Floor
Seattle, Washington 98101-2390
(206) 624-8300 / Fax: (206) 346-9599

AltinoEPA 000103

(Caption continued from previous page.)

GROUP; THE HOME INSURANCE
COMPANY; IRON TRADES MUTUAL
INSURANCE COMPANY; LEXINGTON
INSURANCE COMPANY; LONDON AND
EDINBURGH INSURANCE COMPANY,
LIMITED; LONDON MARKET COMPANIES;
MINSTER INSURANCE COMPANY,
LIMITED; NATIONAL CASUALTY
COMPANY; NATIONAL CASUALTY
COMPANY OF AMERICA; NORTH STAR
REINSURANCE COMPANY; OLD REPUBLIC
INSURANCE COMPANY; PACIFIC
EMPLOYERS INSURANCE COMPANY;
PACIFIC MUTUAL MARINE OFFICE, INC.,
RELIANCE FIRE AND ACCIDENT
INSURANCE CORPORATION; RIVER
THAMES INSURANCE COMPANY,
LIMITED; THE SEVEN PROVINCES
INSURANCE COMPANY, LIMITED; SPHERE
INSURANCE COMPANY, LIMITED; SWISS
NATIONAL INSURANCE COMPANY,
LIMITED; SWISS UNION GENERAL
INSURANCE COMPANY; THE TRAVELERS
INDEMNITY COMPANY; THE TRAVELERS
PROPERTY CASUALTY CORP. AS
SUCCESSOR-IN-INTEREST TO AETNA
CASUALTY AND SURETY CO.;
UNDERWRITERS AT LLOYD'S, LONDON;
UNITED STANDARD INSURANCE
COMPANY, LIMITED; UNITED STATES
FIRE INSURANCE COMPANY; VANGUARD
INSURANCE COMPANY, LIMITED;
WESTPORT INSURANCE CORP. AS
SUCCESSOR-IN-INTEREST TO
MANHATTAN FIRE AND MARINE
INSURANCE COMPANY; WORLD
AUXILIARY INSURANCE CORPORATION,
LIMITED; AND ZURICH AMERICAN
INSURANCE COMPANY OF ILLINOIS,

Defendants.

Defendant, first party property insurer Lexington Insurance Company, ("Lexington"), by its attorneys, Graham & Dunn, P.C. and Mound, Cotton & Wollan, respond to Plaintiff's Complaint upon information and belief as follows:

LEXINGTON INSURANCE COMPANY'S ANSWER
AND AFFIRMATIVE DEFENSES -- 2

j:\c03409\m18471\01001

0052

GRAHAM & DUNN PC
1420 Fifth Avenue 33rd Floor
Seattle, Washington 98101-2390
(206) 624-8300 / Fax: (206) 340-9599

AltinoEPA 000104

1 **I. INTRODUCTION**

2 1.1 Lexington makes no response to the allegations set forth in paragraph 1.1 of the
3 Complaint to the extent those allegations represent no more than a characterization of Plaintiff's claim
4 as otherwise set forth in the Complaint. To the extent that paragraph 1.1 is directed against Lexington
5 Lexington denies each and every allegation.

6 **II. THE PARTIES**

7 2.1 Lexington is without knowledge or information sufficient to form a belief as to the
8 truth of the allegations set forth in paragraphs 2.1 of the Complaint.

9 2.2 Lexington is without knowledge or information sufficient to form a belief as to the
10 truth of the allegations set forth in paragraph 2.2 of the Complaint, except Lexington admits that it is
11 a Delaware corporation with its principal place of business located in Boston, Massachusetts, that it is
12 engaged in the business of, inter alia, selling All-Risk Property Insurance, and that it issued to
13 Washington Natural Gas Company ("WNG") property insurance Policy Number F8167429.

14 2.3 Lexington is without knowledge or information sufficient to form a belief as to the
15 truth of the allegations set forth in paragraph 2.3 of the Complaint.

16 2.4 Lexington is without knowledge or information sufficient to form a belief as to the
17 truth of the allegations set forth in paragraph 2.4 of the Complaint, except Lexington admits that it is
18 a Delaware corporation with its principal place of business located in Boston, Massachusetts, that it is
19 engaged in the business of, inter alia, selling All-Risk Property Insurance, and that it issued to
20 Washington Natural Gas Company ("WNG") property insurance Policy Number F8167429.

21 2.5 Lexington is without knowledge or information sufficient to form a belief as to the
22 truth of the allegations set forth in paragraph 2.5 of the Complaint.

23 **III. JURISDICTION AND VENUE**

24 3.1 Lexington makes no response to the allegations set forth in paragraph 3.1 of the
25 Complaint to the extent those allegations contain legal conclusions. To the extent the allegations are
26

1 deemed to require a response, Lexington is without knowledge or information sufficient to form a
2 belief as to the truth of paragraph 3.1 of the Complaint.

3 3.2 Lexington admits the allegations set forth in paragraph 3.2 of the Complaint.

4 3.3 Lexington makes no response to the allegations set forth in paragraph 3.3 of the
5 Complaint to the extent those allegations contain legal conclusions. To the extent the allegations are
6 deemed to require a response, Lexington is without knowledge or information sufficient to form a
7 belief as to the truth of paragraph 3.3 of the Complaint.

8 **IV. THE INSURANCE POLICIES**

9 4.1 Lexington makes no response to the allegations set forth in paragraph 4.1 of the
10 Complaint inasmuch as those allegations are addressed in their entirety to other defendants in this
11 action. To the extent the allegations are deemed to require a response, Lexington is without
12 knowledge or information sufficient to form a belief as to the truth of paragraph 4.1 of the Complaint.

13 4.2 Lexington is without knowledge or information sufficient to form a belief as to the
14 truth of the allegations set forth in paragraph 4.2 of the Complaint, except Lexington admits that it is
15 engaged in the business of, inter alia, selling All-Risk Property Insurance and that it issued to WNG
16 Policy Number F8167429, effective July 31, 1979 to July 31, 1982.

17 **V. UNDERLYING LIABILITIES**

18 5.1 Lexington is without knowledge or information sufficient to form a belief as to the
19 truth of the allegations set forth in paragraph 5.1(a)-(f) of the Complaint.

20 5.2 Lexington is without knowledge or information sufficient to form a belief as to the
21 truth of the allegations set forth in paragraph 5.2 of the Complaint.

22 5.3 Lexington is without knowledge or information sufficient to form a belief as to the
23 truth of the allegations set forth in paragraph 5.3 of the Complaint.

24 5.4 Lexington is without knowledge or information sufficient to form a belief as to the
25 truth of the allegations set forth in paragraph 5.4 of the Complaint.
26

LEXINGTON INSURANCE COMPANY'S ANSWER
AND AFFIRMATIVE DEFENSES -- 4

j:\c03409\m18471\01001

GRAHAM & DUNN PC
1420 Fifth Avenue 33rd Floor
Seattle, Washington 98101-2390
(206) 624-8300 / Fax: (206) 340-9599

0084

AltinoEPA 000106

1 5.5 Lexington is without knowledge or information sufficient to form a belief as to the
2 truth of the allegations set forth in paragraph 5.5 of the Complaint, except Lexington denies that
3 WNG provided it with timely notice concerning the Underlying Liabilities, and denies that WNG has
4 satisfied all other conditions precedent to recovery under Lexington's Policy Number F8167429 or
5 that such conditions have been satisfied or discharged by operation of law.

6 **VI. RESPONDING TO THE FIRST CLAIM**

7 6.1 With respect to paragraph 6.1 of the Complaint, Lexington adopts and incorporates by
8 reference its answers to paragraphs 1.1 through 5.5 of the Complaint, as if fully restated herein.

9 6.2 Lexington makes no response to paragraph 6.2 of the Complaint inasmuch as those
10 allegations are addressed in their entirety to other defendants in this action.

11 6.3 Lexington makes no response to paragraph 6.3 of the Complaint inasmuch as those
12 allegations are addressed in their entirety to other defendants in this action.

13 6.4 Lexington makes no response to paragraph 6.4 of the Complaint inasmuch as those
14 allegations are addressed in their entirety to other defendants in this action.

15 6.5 Lexington makes no response to paragraph 6.5 of the Complaint inasmuch as those
16 allegations are addressed in their entirety to other defendants in this action.

17 **VII. RESPONDING TO THE SECOND CLAIM**

18 7.1 With respect to paragraph 7.1 of the Complaint, Lexington adopts and incorporates by
19 reference its answers to paragraphs 1.1 through 6.5 of the Complaint, as if fully restated herein.

20 7.2 Lexington denies that plaintiff suffered physical loss and damage to property at the
21 Everett, Chehalis and A Street Sites during the specific period of time that Lexington's Policy
22 Number F8167429 was in force and effect, and Lexington denies that all conditions precedent to
23 coverage under Policy Number F8167429 have been satisfied, waived or are otherwise inapplicable.
24 Lexington is without knowledge or information sufficient to form a belief as to the truth of the
25 remaining allegations set forth in paragraph 7.2 of the Complaint inasmuch as these allegations
26 pertain to other defendants in this action.

LEXINGTON INSURANCE COMPANY'S ANSWER
AND AFFIRMATIVE DEFENSES -- 5

j:\c03409\m18471\01001

0085

GRAHAM & DUNN PC
1420 Fifth Avenue 33rd Floor
Seattle, Washington 98101-2390
(206) 624-8300 / Fax: (206) 340-9599

AltinoEPA 000107

1 7.3 With respect to paragraph 7.3 of the Complaint, Lexington admits that it disputes one
2 or more of WNG's contentions set forth in the preceding paragraphs of Plaintiff's Complaint and
3 denies that it breached any duty to pay or reimburse WNG. Lexington is without knowledge or
4 information sufficient to form a belief as to the truth of the remaining allegations of paragraph 7.3 of
5 the Complaint inasmuch as these allegations pertain to other defendants in this action.

6 7.4 Lexington makes no response to the allegations set forth in paragraph 7.4 of the
7 Complaint to the extent those allegations contain legal conclusions. To the extent the allegations are
8 deemed to require a response, Lexington admits that a justiciable controversy exists between it and
9 WNG as to whether there is coverage under its policy for the alleged damage. All remaining
10 allegations are denied.

11 **VIII. RESPONDING TO THE THIRD CLAIM**

12 8.1 With respect to paragraph 8.1 of the Complaint, Lexington adopts and incorporates by
13 reference its answers to paragraphs 1.1 through 7.4 of the Complaint, as if fully restated herein.

14 8.2 Lexington makes no response to the allegations set forth in paragraph 8.2 of the
15 Complaint inasmuch as those allegations are directed in their entirety at other defendants in this
16 action.

17 8.3 Lexington makes no response to the allegations set forth in paragraph 8.3 of the
18 Complaint inasmuch as those allegations are directed in their entirety at other defendants in this
19 action.

20 8.4 Lexington makes no response to the allegations set forth in paragraph 8.4 of the
21 Complaint inasmuch as those allegations are directed in their entirety at other defendants in this
22 action.

23 **IX. RESPONDING TO THE FOURTH CLAIM**

24 9.1 With respect to paragraph 9.1 of the Complaint, Lexington adopts and incorporates by
25 reference its answers to paragraphs 1.1 through 8.4 of the Complaint, as if fully restated herein.

26
LEXINGTON INSURANCE COMPANY'S ANSWER
AND AFFIRMATIVE DEFENSES -- 6

j:\c03409\m18471\01001

0086

GRAHAM & DUNN PC
1420 Fifth Avenue 33rd Floor
Seattle, Washington 98101-2390
(206) 624-8300 / Fax: (206) 340-9599

1 9.2 Lexington denies each and every allegation set forth in paragraph 9.2 of the Complaint
2 inasmuch as it pertains to Lexington.

3 9.3 Lexington denies each and every allegation set forth in paragraph 9.3 of the Complaint
4 inasmuch as it pertains to Lexington.

5 9.4 Lexington denies each and every allegation set forth in paragraph 9.4 of the Complaint
6 inasmuch as it pertains to Lexington.

7 **PRAYER FOR RELIEF**

8 10. To the extent that Lexington is required to respond to the Prayer For Relief contained
9 in paragraphs 10.1 through 10.3 of the Complaint, Lexington denies that Plaintiff is entitled to any of
10 the relief it seeks from Lexington or that Plaintiff has suffered any damages for which it is entitled to
11 recovery under the Lexington Policy.

12 11. To the extent that Lexington is deemed to have responded with insufficient
13 particularity to any allegation within the Complaint, each such allegation is hereby denied.

14 **FIRST AFFIRMATIVE DEFENSE**

15 12. The Complaint fails to state a cause of action against Lexington upon which relief may
16 be granted.

17 **SECOND AFFIRMATIVE DEFENSE**

18 13. Lexington pleads the defenses of waiver, estoppel, and laches and reserves its right to
19 rely upon those legal defenses to the extent that evidence developed in the course of litigation
20 establishes and supports those defenses.

21 **THIRD AFFIRMATIVE DEFENSE**

22 14. Some or all of the Complaint presents no justiciable case or controversy between
23 Lexington and Plaintiff.

24 **FOURTH AFFIRMATIVE DEFENSE**

25 15. Some or all of Plaintiff's claims are barred by the applicable contractual limitation
26 period contained in Policy Number F8167429, or the applicable statutes of limitation.

LEXINGTON INSURANCE COMPANY'S ANSWER
AND AFFIRMATIVE DEFENSES -- 7

j:\c03409\m18471\01001

GRAHAM & DUNN PC
1420 Fifth Avenue 33rd Floor
Seattle, Washington, 98101-2390
(206) 624-8300 / Fax: (206) 340-9599

10/27

1 **FIFTH AFFIRMATIVE DEFENSE**

2 16. Plaintiff's claims are barred to the extent that Plaintiff's alleged damage was a result of
3 losses or events that were inevitable and non-fortuitous and are not covered under Policy Number
4 F8167429.

5 **SIXTH AFFIRMATIVE DEFENSE**

6 17. To the extent that Plaintiff's claims involve losses already in progress at the inception
7 of Policy Number F8167429, they are not covered by the Lexington Policy.

8 **SEVENTH AFFIRMATIVE DEFENSE**

9 18. Plaintiff's claims are barred to the extent they do not seek coverage for loss or damage
10 to insured property.

11 **EIGHTH AFFIRMATIVE DEFENSE**

12 19. Plaintiff's claims are barred to the extent that Plaintiff does not establish that an
13 insured peril caused physical loss or damage to insured property during a specific period and that
14 Lexington's Policy was in force and effect during that particular time period.

15 **NINTH AFFIRMATIVE DEFENSE**

16 20. Plaintiff's claims are barred to the extent that Plaintiff has failed to join all interested,
17 required, necessary and/or indispensable parties or claims to this action.

18 **TENTH AFFIRMATIVE DEFENSE**

19 21. Plaintiff's claims are barred to the extent they seek coverage for costs incurred as the
20 result of equitable or injunctive relief sought by third parties, including but not limited to, costs
21 relating to environmental studies and remediation undertaken at the direction of governmental
22 authorities.

23 **ELEVENTH AFFIRMATIVE DEFENSE**

24 22. Plaintiff's claims are barred to the extent they seek coverage for losses resulting from
25 voluntary payments, settlements, obligations voluntarily assumed, or expenses voluntarily incurred by
26 Plaintiff.

TWELFTH AFFIRMATIVE DEFENSE

23. Plaintiff's claims are barred to the extent they seek coverage for fines, penalties, or punitive or exemplary damages where either the same are specifically excluded by the policy and/or coverage of same are barred by public policy, or as a matter of law.

THIRTEENTH AFFIRMATIVE DEFENSE

24. Plaintiff's claims are barred to the extent they seek coverage for losses arising out of perils that are specifically excluded from coverage under Policy Number F8167429.

FOURTEENTH AFFIRMATIVE DEFENSE

25. Plaintiff's claims are barred because of Plaintiff's failure to comply with conditions precedent under Policy Number F8167429, thereby prejudicing Lexington, including its failure to (1) provide timely notice of loss to the defendants (2) file a timely sworn statement in proof of loss, and (3) permit Lexington to timely investigate the loss(es).

FIFTEENTH AFFIRMATIVE DEFENSE

26. Plaintiff's claims are barred to the extent that Plaintiff did not take steps necessary to prevent further damage, safeguard insured property, and/or mitigate any damage already sustained or known to exist.

SIXTEENTH AFFIRMATIVE DEFENSE

27. Plaintiff's claims are barred on whole or in part by reason of the "other insurance provisions" contained in Policy Number F8167429.

SEVENTEENTH AFFIRMATIVE DEFENSE

28. To the extent the policy of insurance issued by Lexington provides coverage for any claims of Plaintiff, such being expressly denied, Plaintiff's claims are subject to the applicable self-insured retentions, limits of liability, and a separate deductible for each insured incident that caused physical loss or damage to the insured property.

LEXINGTON INSURANCE COMPANY'S ANSWER
AND AFFIRMATIVE DEFENSES -- 9

j:\c03409\m18471\01001

0089

GRAHAM & DUNN pc
1420 Fifth Avenue 33rd Floor
Seattle, Washington 98101-2390
(206) 624-8300 / Fax: (206) 340-9599

AltinoEPA 000111

1 **EIGHTEENTH AFFIRMATIVE DEFENSE**

2 29. To the extent the policy of insurance issued by Lexington provides coverage for the
3 alleged claims of Plaintiff, such coverage being expressly denied, this policy shall apply, if at all, in
4 excess of all other insurance per their terms and conditions.

5 **NINETEENTH AFFIRMATIVE DEFENSE**

6 30. Plaintiff's claims are barred to the extent they seek coverage for property damage to
7 persons or entities not insured under Policy Number F8167429.

8 **TWENTIETH AFFIRMATIVE DEFENSE**

9 31. The laws of jurisdictions other than the State of Washington may apply to this action and
10 Lexington may rely on those laws.

11 **TWENTY-FIRST AFFIRMATIVE DEFENSE**

12 32. Plaintiff's claims against Lexington are barred, in whole or in part, by collateral estoppel
13 and/or res judicata.

14 **TWENTY-SECOND AFFIRMATIVE DEFENSE**

15 33. Plaintiff's claims are barred to the extent that Plaintiff seeks coverage for loss or damage
16 to insured property in which it did not have an insurable interest at the time of the alleged loss or
17 damage.

18 **TWENTY-THIRD AFFIRMATIVE DEFENSE**

19 34. The Complaint does not describe Plaintiff's claims with sufficient particularity and
20 Lexington has not been able to determine what additional defenses, if any, it may have. Therefore,
21 Lexington reserves the right to assert additional defenses and amended answers as further information
22 concerning the underlying claims is provided.

23 WHEREFORE, defendant Lexington Insurance Company demands judgment against Plaintiff
24 as follows:

25 (a) dismissing all claims against Lexington with prejudice:
26

1 (b) declaring that the claims asserted by Plaintiff for which coverage is sought herein are
2 not covered by any policy of insurance allegedly issued by Lexington;

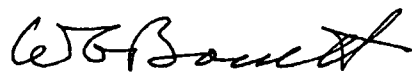
3 (c) awarding Lexington costs, disbursements and reasonable attorneys fees, and

4 (d) awarding such other relief as this Court deems just and equitable.

5 DATED this 22^d day of March, 1998.

6 GRAHAM & DUNN

7
8 By


W. George Bassett
WSBA# 2429

9
10 Stuart Cotton, Esq.
11 Philip C. Silverberg, Esq.
12 MOUND, COTTON & WOLLAN
One Battery Park Plaza
New York, New York 10004

13 Attorneys for Lexington Insurance Company
14
15
16
17
18
19
20
21
22
23
24
25
26

DECLARATION OF SERVICE

The undersigned certifies under penalty of perjury under the laws of the State of Washington that on the below date I mailed or caused delivery of a true copy of this document to Counsel of Record for

JUDGE WILLIAM L. DOWNING

Attached Service List

at the regular office or residence thereof.

DATED this 24th day of March, 1998

at Seattle, Washington.

[Signature] CLERK

SUPERIOR COURT OF THE STATE OF WASHINGTON
FOR KING COUNTY

PUGET SOUND ENERGY, INC.

Plaintiff,

v.

ALBA GENERAL INSURANCE
COMPANY, et al.,

Defendants.

No. 97-2-29050-3 SEA

DEFENDANT UNITED
STATES FIRE INSURANCE
COMPANY'S ANSWER AND
AFFIRMATIVE DEFENSES

Defendant United States Fire Insurance Company ("USF") answers the Complaint for Declaratory Relief and Money Damages ("the Complaint") of plaintiff Puget Sound Energy, Inc. ("PSE") as follows:

I. INTRODUCTION

1.1 USF admits that PSE purports to assert the claims and to seek the relief described in paragraph 1.1 of the Complaint. but in all other respects denies the allegations set forth in that paragraph.

II. THE PARTIES

2.1 USF states that the legal status, rights and responsibilities of PSE, as paragraph 2.1 purports to characterize and summarize them, are matters established under agreements and laws neither referenced nor incorporated in the Complaint; that USF is without knowledge or information sufficient to form a belief as to the truth or falsity of the characterization and summary of such matters set forth in paragraph 2.1; and that USF therefore denies the allegations set forth in paragraph 2.1.

USF'S ANSWER AND AFFIRMATIVE DEFENSES - 1

i:\comunon\pselans envision\wng2

ORIGINAL

WILSON SMITH COCHRAN & DICKERSON
A PROFESSIONAL SERVICES CORPORATION
1700 FINANCIAL CENTER, 1215 4TH AVENUE
SEATTLE, WA 98161-1007
Telephone: (206) 623-4100

0005

AltinoEPA 000114

2.2 To the extent that the allegations set forth in paragraph 2.2 of the Complaint refer or relate to entities other than USF, USF is without knowledge or information sufficient to form a belief as to the truth or falsity of such allegations, and therefore denies them. To the extent that the allegations set forth in this paragraph refer or relate to USF, USF admits that it is engaged in the business of insurance, but in all other respects USF denies those allegations.

2.3 To the extent that the allegations set forth in paragraph 2.3 of the Complaint refer or relate to entities other than USF, USF is without knowledge or information sufficient to form a belief as to the truth or falsity of such allegations, and therefore denies them. To the extent that the allegations set forth in this paragraph refer or relate to USF, USF admits that it issued excess insurance coverage to Washington Natural Gas Company under a policy of insurance numbered CAG 5 98 30, but denies the allegations set forth in this paragraph to the extent that they purport to characterize or summarize the terms, conditions, exclusions, and other provisions of that policy, which speak for themselves, and specifically denies that the policy was in force from 3/28/56 - 3/28/59, as is alleged in Exhibit A. USF admits that it is incorporated in the State of New York, but denies that its principal place of business is located in Basking Ridge, N.J., as is alleged in Exhibit A.

2.4 The allegations set forth in paragraph 2.4 of the Complaint refer or relate to entities other than USF; USF is without knowledge or information sufficient to form a belief as to the truth or falsity of such allegations; and USF therefore denies them.

2.5 The allegations set forth in paragraph 2.5 of the Complaint refer or relate to entities other than USF; USF is without knowledge or information sufficient to form a belief as to the truth or falsity of such allegations; and USF therefore denies them.

III. JURISDICTION AND VENUE

3.1 USF admits that PSE purports to invoke the Court's jurisdiction under the statutes referenced in paragraph 3.1 of the Complaint, but is without knowledge or information sufficient to form a belief as to the validity of the legal conclusions set forth in this paragraph, and therefore denies them.

1 3.2 USF admits that PSE purports to invoke the Court's jurisdiction as stated in
2 paragraph 3.2 of the Complaint, but is without knowledge or information sufficient to form
3 a belief as to the validity of the legal conclusions set forth in this paragraph, and therefore
4 denies them.

5 3.3 USF admits that PSE purports to venue its action in this Court under the
6 statutes referenced in paragraph 3.3 of the Complaint, but is without knowledge or
7 information sufficient to form a belief as to the validity of the legal conclusions set forth in
8 this paragraph, and therefore denies them.

9 **IV. THE INSURANCE POLICIES AT ISSUE**

10 4.1 To the extent that the allegations set forth in paragraph 4.1 of the Complaint
11 refer or relate to entities other than USF, USF is without knowledge or information
12 sufficient to form a belief as to the truth or falsity of such allegations, and therefore denies
13 them. To the extent that the allegations set forth in this paragraph refer or relate to USF,
14 USF admits that it issued excess insurance coverage to Washington Natural Gas Company
15 under a policy of insurance numbered CAG 5 98 30, but denies the allegations set forth in
16 this paragraph to the extent that they purport to characterize or summarize the terms,
17 conditions, exclusions, and other provisions of that policy, which speak for themselves, and
18 specifically denies that the policy was in force from 3/28/56 - 3/28/59, as is alleged in
Exhibit A.

19 4.2 The allegations set forth in paragraph 4.2 of the Complaint refer or relate to
20 entities other than USF; USF is without knowledge or information sufficient to form a belief
21 as to the truth or falsity of such allegations; and USF therefore denies them.

22 **V. UNDERLYING LIABILITIES**

23 5.1 USF is without knowledge or information sufficient to form a belief as to the
24 truth or falsity of the allegations set forth in paragraph 5.1, and therefore denies them.

25 5.2 USF is without knowledge or information sufficient to form a belief as to the
26 truth or falsity of the allegations set forth in paragraph 5.2, and therefore denies them.

1 5.3 USF is without knowledge or information sufficient to form a belief as to th
2 truth or falsity of the allegations set forth in paragraph 5.3, and therefore denies them.

3 5.4 USF is without knowledge or information sufficient to form a belief as to th
4 truth or falsity of the allegations set forth in paragraph 5.4, and therefore denies them.

5 5.5 To the extent that the allegations set forth in paragraph 5.5 of the Complaint
6 refer or relate to entities other than USF, USF is without knowledge or information
7 sufficient to form a belief as to the truth or falsity of such allegations, and therefore denies
8 them. To the extent that the allegations set forth in this paragraph refer or relate to USF,
9 USF denies that "all conditions precedent to the recovery under the policies have been
10 satisfied or discharged by operation of law."

11 **VI. FIRST CLAIM : DECLARATORY JUDGMENT**
AGAINST THE CGL INSURER DEFENDANTS

12 6.1 USF repeats and realleges its responses to paragraphs 1.1 through 5.5 of the
13 Complaint, as set forth above.

14 6.2 To the extent that the allegations set forth in paragraph 6.2 of the Complaint
15 refer or relate to entities other than USF, USF is without knowledge or information
16 sufficient to form a belief as to the truth or falsity of such allegations, and therefore denies
17 them. To the extent that the allegations set forth in this paragraph refer or relate to USF,
18 USF denies those allegations insofar as they purport to characterize or summarize the terms,
19 conditions, exclusions, and other provisions of that policy, which speak for themselves, and
20 further denies that USF has a duty to indemnify PSE or its predecessors in connection with
21 the claims asserted in the Complaint.

22 6.3 To the extent that the allegations set forth in paragraph 6.3 of the Complaint
23 refer or relate to entities other than USF, USF is without knowledge or information
24 sufficient to form a belief as to the truth or falsity of such allegations, and therefore denies
25 them. To the extent that the allegations set forth in this paragraph refer or relate to USF,
26 USF denies those allegations insofar as they purport to characterize or summarize the terms,
27 conditions, exclusions, and other provisions of that policy, which speak for themselves, and
28

1 further denies that USF has a duty to defend PSE or its predecessors in connection with the
2 claims asserted in the Complaint.

3 6.4 To the extent that the allegations set forth in paragraph 6.4 of the Complaint
4 refer or relate to entities other than USF, USF is without knowledge or information
5 sufficient to form a belief as to the truth or falsity of such allegations, and therefore denies
6 them. To the extent that the allegations set forth in this paragraph refer or relate to USF,
7 USF denies that it has a duty to defend, or that it has breached any such duty to defend,
8 or to pay defense costs, or to indemnify PSE or its predecessors in connection with the
9 claims asserted in the Complaint.

10 6.5 To the extent that the allegations set forth in paragraph 6.5 of the Complaint
11 refer or relate to entities other than USF, USF is without knowledge or information
12 sufficient to form a belief as to the truth or falsity of such allegations, and therefore denies
13 them. To the extent that the allegations set forth in this paragraph refer or relate to USF,
14 USF denies those allegations.

15 **VII. SECOND CLAIM : DECLARATORY JUDGMENT**
16 **AGAINST PROPERTY INSURER DEFENDANTS ONLY**

17 7.1 to 7.4 The allegations set forth in paragraphs 7.1 to 7.4 of the Complaint refer
18 or relate to entities other than USF; USF is without knowledge or information sufficient to
19 form a belief as to the truth or falsity of such allegations; and USF therefore denies them.

20 **VIII. THIRD CLAIM : BREACH OF CONTRACT**
21 **AGAINST CGL INSURER DEFENDANTS**

22 8.1 USF repeats and realleges its responses to paragraphs 1.1 through 7.4 of the
23 Complaint, as set forth above.

24 8.2 to 8.4 To the extent that the allegations set forth in paragraphs 8.2 to 8.4 of
25 the Complaint refer or relate to entities other than USF, USF is without knowledge or
26 information sufficient to form a belief as to the truth or falsity of such allegations, and
27 therefore denies them. To the extent that the allegations set forth in paragraphs 8.2 to 8.4
28 refer or relate to USF, USF denies those allegations.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

**IX. FOURTH CLAIM : BREACH OF CONTRACT
AGAINST PROPERTY INSURER DEFENDANTS**

9.1 to 9.4 The allegations set forth in paragraphs 9.1 to 9.4 of the Complaint refer or relate to entities other than USF; USF is without knowledge or information sufficient to form a belief as to the truth or falsity of such allegations; and USF therefore denies them

X. PRAYER FOR RELIEF

10.1 to 10.3 To the extent that the allegations set forth in paragraphs 10.1 to 10.3 of the Complaint refer or relate to the alleged liability of entities other than USF for the relief therein described, USF is without knowledge or information sufficient to form a belief as to the truth or falsity of such allegations, and therefore denies them. To the extent that the allegations set forth in paragraphs 10.1 to 10.3 refer or relate to the alleged liability of USF for the relief therein described, USF denies those allegations.

AFFIRMATIVE DEFENSES

Having thus stated its Answer to the allegations set forth in the Complaint, USF asserts the following as its Affirmative Defenses to this action:

1. The Complaint fails to state a claim against USF for which relief can be granted, fails to state facts which show that there is an actual and justiciable controversy between USF and PSE, and improperly asks the Court to provide an advisory ruling.

2. PSE has failed to satisfy one or more of the conditions precedent to coverage under the USF policy, which bars its claims in whole or in part.

3. Some or all of PSE's claims are barred in whole or in part by the terms, definitions, conditions, exclusions and limitations contained in the USF excess insurance policy at issue in this action.

4. The USF policy provides coverage for "occurrences," and does not afford coverage for conduct, conditions or events that result in damage, either expected or intended by an insured. To the extent that PSE or its predecessors expected or intended the environmental conditions alleged in the Complaint, they were not the result of an "occurrence" and are not covered under the USF policy.

1 5. The USF policy does not provide coverage for claims arising from conduct,
2 conditions or events that were known or damages that were either expected or intended in
3 whole or in part by PSE or its predecessors before or at the inception of such policy.

4 6. The USF policy does not provide coverage for any damage to property owned,
5 occupied or leased by an insured, or within the care, custody or control of an insured, or for
6 any premises alienated by the insured out of which an accident arises. PSE's claims are
7 barred to the extent that they relate to property which is or was in whole or in part owned
8 or leased or within the care, custody or control of PSE or its predecessors, or to premises
9 which have been alienated by PSE or its predecessors.

10 7. Some or all of PSE's claims may be barred by applicable statutes of limitations.

11 8. Some or all of PSE's claims may be barred by the doctrines of laches, waiver and/or
12 estoppel.

13 9. PSE's claims are barred to the extent that they do not arise out of "personal injury"
14 or "property damage" caused by an "occurrence" which happened during the effective dates
15 of the USF policy.

16 10. The USF excess insurance policy and applicable underlying insurance policies do
17 not provide coverage for "preventative measures" taken by the insured.

18 11. PSE's claims for coverage are barred to the extent that PSE's damages resulted
19 from its failure to mitigate its damages.

20 12. PSE's claims are barred to the extent that PSE, its predecessors, or their agents
21 negligently or intentionally failed to disclose, concealed or misrepresented material facts in
22 order to obtain the USF excess insurance policy, or any other policy which provides primary
23 or excess coverage underlying the USF excess insurance policy.

24 13. The USF excess insurance policy does not provide coverage for PSE's claims to
25 the extent that it seeks to recover sums paid in the nature of fines, penalties or exemplary
26 or punitive damages.

27 14. The USF excess insurance policy at issue is subject to various limitations,
28 including but not limited to, deductibles or self-insured retentions, and further is subject to

1 annual per-occurrence and/or aggregate limits. USF's liability to PSE, if any, is therefore
2 restricted to and by said limits and provisions.

3 15. The USF excess insurance policy at issue and the applicable underlying insurance
4 require PSE to cooperate fully with USF in the investigation of any claims or suits against
5 PSE. If and to the extent that PSE has failed to comply with this requirement, PSE's claims
6 are barred in whole or in part.

7 16. The putative liabilities alleged in the Complaint do not constitute sums that
8 PSE has been obligated to pay by reason of the liability imposed upon PSE by law for
9 damages on account of personal injury or property damage, caused by or arising out of an
10 occurrence.

11 17. None of the matters alleged in the Complaint constitute "personal injury" or
12 "property damage" within the meaning of the USF policy and applicable underlying
13 insurance. Consequently, USF has no obligation to indemnify Plaintiff.

14 18. The USF insurance policy at issue is an excess insurance policy under which
15 USF has no duty to defend or to pay for the defense of PSE in connection with the
16 underlying claims.

17 19. Any payments that PSE or its predecessors allegedly have made as a result of
18 environmental conditions at the sites identified in the Complaint were voluntary, have not
19 been imposed upon PSE by law or contract, and were not made with the consent of USF,
20 all in violation of the USF excess insurance policy at issue and applicable underlying
21 insurance.

22 20. To the extent PSE seeks compensation for losses which have not yet arisen and
23 for amounts which PSE has not yet paid, USF is not obligated to respond under the USF
24 excess insurance policy at issue.

25 21. The USF excess insurance policy at issue does not require USF to indemnify
26 or to pay any sums on behalf of PSE or its predecessors until the retained limit has been
27 reached and until all other insurance available to the insured has been exhausted. Therefore,
28

1 USF has no duty to indemnify or pay any sums associated with the claims referenced in the
2 Complaint.

3 22. USF's liability, if any, may be limited by the "other insurance" clause contained
4 in the policy.

5 23. To the extent that PSE has failed to provide timely notice to USF of the
6 conditions, events or damages asserted against it as alleged in its Complaint, in accordance
7 with the terms of the USF excess insurance policy at issue, such failure to provide timely
8 notice has prejudiced USF and bars PSE's claims, in whole or in part.

9 24. The USF excess insurance policy at issue excludes coverage for liability
10 assumed by PSE or its predecessors pursuant to contract or agreement. To the extent any
11 loss alleged in the Complaint arises from liability assumed by PSE or its predecessors
12 pursuant to any contract or agreement, PSE's claims are barred in whole or in part.

13 25. The Complaint does not describe the underlying claims made against PSE with
14 sufficient particularity to enable USF to determine all of its defenses to the Complaint,
15 including but not limited to defenses based upon the terms, conditions or exclusions of USF
16 excess insurance policy at issue. USF therefore reserves its right to assert all defenses that
17 may be pertinent to the Complaint based upon additional information obtained through
18 discovery in this action.

19 26. The rights and duties of the parties may be governed by the laws of
20 jurisdictions other than the State of Washington under choice of law principles applicable
21 to the policies and claims at issue in this action.

22 27. USF reserves the right to amend its Answer and to plead additional affirmative
23 defenses as they may become known for any reason during the pendency of this action.
24 USF also adopts, as appropriate, and reserves the right to claim the benefit of any
25 affirmative defense asserted by other defendants in this action.

26 28. USF denies that it is liable to PSE under the excess insurance policy at issue.
27 However, if and to the extent that USF is held liable to PSE under that policy, USF may be
28

1 entitled to recover from one or more of the other defendant insurers, or from other entities
2 not yet joined in this action, all or some portion of any sum which USF is required to pay
3 to PSE, by way of contribution, indemnity, apportionment, allocation, or other legal or
4 equitable relief. USF therefore reserves the right to amend its Answer to include cross-
5 claims against other defendant insurers or other entities not yet joined in this action, or to
6 seek such relief in a separate and/or subsequent action.


7 **PRAYER FOR RELIEF**

8 Having thus stated its answer to the Complaint and its affirmative defenses thereto,
9 defendant USF asks the Court to grant the following relief:

- 10 1. An order dismissing with prejudice all claims asserted against USF in the
11 Complaint;
12 2. An order declaring that USF has no duty to defend or to indemnify the
13 Plaintiff under the terms and conditions of the contract of insurance between USF and PSE
14 or its predecessors;
15 3. An award of costs and attorney's fees incurred in the defense of this action;
16 and,
17 4. Such other and further relief as the court deems just and equitable under the
18 circumstances.

19 DATED this 25th day of March, 1998.

20 WILSON SMITH COCHRAN & DICKERSON

21 By 
22 David M. Jacobi, WSBA #13524
23 Attorney for Defendant
24 United States Fire Insurance Company

25
26
27
28 **USF'S ANSWER AND AFFIRMATIVE DEFENSES - 10**

i:\common\psel.ans envision\wng2

WILSON SMITH COCHRAN & DICKERSON
A PROFESSIONAL SERVICES CORPORATION
1700 FINANCIAL CENTER, 1215 4TH AVENUE
SEATTLE, WA 98161-1007
Telephone: (206) 623-4100

0104

FILED

c:\96-1145\pleading\ans.pmm

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF KING

PUGET SOUND ENERGY, INC., SEATTLE, WA

NO. 97-2-29050-3 SEA

Plaintiffs,

EMPLOYERS MUTUAL CASUALTY
COMPANY'S ANSWER TO
PLAINTIFF'S COMPLAINT

v.

ALBA GENERAL INSURANCE
COMPANY, et al.,

Defendants.

Defendant EMPLOYERS MUTUAL CASUALTY COMPANY incorrectly sued as
PACIFIC MUTUAL MARINE OFFICE, INC., its Managing General Agent, ("EMPLOYERS
MUTUAL"), by and through its Managing General Agent and its attorneys, in answer to Plaintiff
PUGET SOUND ENERGY, INC.'s Complaint for Declaratory Relief and Money Damages
("Complaint"), states as follows:

I. INTRODUCTION

1.1 The allegations in Paragraph 1.1, including subparagraphs (a) and (b), are narrative,
and, therefore, no response is required. To the extent that a response is deemed required,
EMPLOYERS MUTUAL denies that Plaintiff is entitled to any affirmative relief.

II. THE PARTIES

2.1 EMPLOYERS MUTUAL is without knowledge or information sufficient to form a
belief as to the truth of the allegations in Paragraph 2.1, and, therefore, denies the same.

2.2 EMPLOYERS MUTUAL admits the allegations in Paragraph 2.2 only to the extent

EMPLOYERS MUTUAL'S ANSWER TO PLAINTIFF'S COMPLAINT

DAAR, FISHER, KANARIS & VANEK, P.C.
200 SOUTH WACKER DRIVE, SUITE 3300
CHICAGO, ILLINOIS 60606

ORIGINAL

0108

AltinoEPA 000124

1 they are directed against it. EMPLOYERS MUTUAL is without knowledge or information
2 sufficient to form a belief as to the truth of the remaining allegations in Paragraph 2.2, and,
3 therefore, denies the same.

4
5 2.3 The allegations in Paragraph 2.3 are not directed against EMPLOYERS MUTUAL.
6 and, therefore, no response is required. To the extent that a response is deemed required.
7 EMPLOYERS MUTUAL is without knowledge or information sufficient to form a belief as to the
8 truth of the allegations in Paragraph 2.3, and, therefore, denies the same.

9
10 2.4 EMPLOYERS MUTUAL admits that Exhibit B is attached to the Complaint and that
11 it contains various information about the defendant property insurance carriers. EMPLOYERS
12 MUTUAL admits that it is incorporated in the State of California, but denies that its principal place
13 of business is in New York, New York, but states that its principal place of business is in San
14 Francisco, California. EMPLOYERS MUTUAL further states that EMPLOYERS MUTUAL
15 CASUALTY COMPANY is incorporated in the State of Iowa and its principal place of business is
16 in Des Moines, Iowa. EMPLOYERS MUTUAL is without knowledge or information sufficient to
17 form a belief as to the truth of the remaining allegations in Paragraph 2.4, and, therefore, denies the
18 same.

19
20 2.5 The allegations in Paragraph 2.5 are not directed against EMPLOYERS MUTUAL,
21 and, therefore, no response is required. To the extent that a response is deemed required,
22 EMPLOYERS MUTUAL is without knowledge or information sufficient to form a belief as to the
23 truth of the allegations in Paragraph 2.5, and, therefore, denies the same.

24 III. JURISDICTION AND VENUE

25
26 3.1 The allegations in Paragraph 3.1 are narrative and state legal conclusions, and,
27 therefore, no response is required. The extent that a response is deemed required, EMPLOYERS

1 MUTUAL is without knowledge or information sufficient to form a belief as to the truth of the
2 allegations in Paragraph 3.1, and, therefore, denies the same.

3 3.2 The allegations in Paragraph 3.2 are narrative and state legal conclusions, and,
4 therefore, no response is required. To the extent that a response is deemed required, EMPLOYERS
5 MUTUAL is without knowledge or information sufficient to form a belief as to the truth of the
6 allegations in Paragraph 3.2, and, therefore denies the same.

7 3.3 The allegations in Paragraph 3.3 are narrative and state legal conclusions, and,
8 therefore, no response is required. To the extent that a response is deemed required, EMPLOYERS
9 MUTUAL is without knowledge or information sufficient to form a belief as to the truth of the
10 allegations in Paragraph 3.3, and, therefore, denies the same.

11 **IV. THE INSURANCE POLICIES AT ISSUE**

12 4.1 The allegations in Paragraph 4.1 are not directed against EMPLOYERS MUTUAL,
13 and, therefore, no response is required. To the extent that a response is deemed required,
14 EMPLOYERS MUTUAL is without knowledge or information sufficient to form a belief as to the
15 truth of the allegations in Paragraph 4.1, and, therefore, denies the same.

16 4.2 EMPLOYERS MUTUAL admits that it issued a first-party property insurance policy
17 to Washington National Gas Company, Policy No. PMMO IM 22185, PMMO IM 22186, and
18 PMMO IM 22187, which were in effect from July 31, 1979 to July 31, 1982, and, at all times
19 relevant, these policies were subject solely to their terms, conditions, provisions, limitations,
20 exclusions contained therein, and not otherwise. EMPLOYERS MUTUAL denies any allegations
21 in Paragraph 4.2 to the contrary. EMPLOYERS MUTUAL is without knowledge or information
22 sufficient to form a belief as to the truth of the remaining allegations in Paragraph 4.2 concerning
23 other defendants, and, therefore, denies the same.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27

V. UNDERLYING LIABILITIES

5.1 EMPLOYERS MUTUAL is without knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 5.1, including subparagraphs (a)-(f), and, therefore, denies the same.

5.2 EMPLOYERS MUTUAL is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 5.2, and, therefore, denies the same.

5.3 The allegations in Paragraph 5.3 are not directed against EMPLOYERS MUTUAL, and, therefore, no response is required. To the extent that a response is deemed required, EMPLOYERS MUTUAL is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 5.3, and, therefore, denies the same.

5.4 EMPLOYERS MUTUAL denies each and every allegation against it in Paragraph 5.4. EMPLOYERS MUTUAL is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations in Paragraph 5.4 concerning other defendants, and, therefore, denies the same.

5.5 EMPLOYERS MUTUAL denies each and every allegation against it in Paragraph 5.5. EMPLOYERS MUTUAL is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations in Paragraph 5.5 concerning other defendants, and, therefore, denies the same.

**VI. FIRST CLAIM: DECLARATORY JUDGMENT AGAINST THE
CGL INSURER DEFENDANTS**

6.1-6.5 The allegations asserted in Paragraphs 6.1-6.5 are not directed against EMPLOYERS MUTUAL. Therefore, no response from EMPLOYERS MUTUAL to the allegations in Paragraphs 6.1-6.5 is required. To the extent that a response is deemed required, EMPLOYERS

1 MUTUAL is without knowledge or information sufficient to form a belief as to the truth of the
2 allegations in Paragraphs 6.1-6.5, and, therefore, denies the same.

3 **VII. SECOND CLAIM: DECLARATORY JUDGMENT AGAINST PROPERTY**
4 **INSURER DEFENDANTS ONLY**

5 7.1 EMPLOYERS MUTUAL repeats and realleges its answers to Paragraphs 1.1
6 through 6.5 as though fully set forth here.

7 7.2 EMPLOYERS MUTUAL denies each and every allegation against it in Paragraph
8 7.2. EMPLOYERS MUTUAL is without knowledge or information sufficient to form a belief as
9 to the truth of the remaining allegations in Paragraph 7.2 concerning other defendants, and,
10 therefore, denies the same.

11 7.3 EMPLOYERS MUTUAL admits only that through its answer to the Complaint it
12 disputes one or more of WNG's contentions set forth in the preceding paragraphs. EMPLOYERS
13 MUTUAL denies each and every remaining allegation directed against it in Paragraph 7.3.
14 EMPLOYERS MUTUAL is without knowledge or information sufficient to form a belief as to the
15 truth of the remaining allegations in Paragraph 7.3 concerning other defendants, and, therefore,
16 denies the same.

17 7.4 The allegations in Paragraph 7.4 are narrative and state legal conclusions to which
18 no response is required. To the extent that a response is deemed required, EMPLOYERS MUTUAL
19 denies each and every allegation against it in Paragraph 7.4 and EMPLOYERS MUTUAL is
20 without knowledge or information sufficient to form a belief as to the truth of the remaining
21 allegations in Paragraph 7.4 concerning other defendants, and, therefore, denies the same.

22 **VII. THIRD CLAIM: BREACH OF CONTRACT AGAINST CGL**
23 **INSURER DEFENDANTS**

24 8.1-8.4 The allegations asserted in Paragraphs 8.1-8.4 are not directed against
25
26
27

1 EMPLOYERS MUTUAL. Therefore, no response from EMPLOYERS MUTUAL to the allegations
2 in Paragraphs 8.1-8.4 is required. To the extent that a response is deemed required, EMPLOYERS
3 MUTUAL is without knowledge or information sufficient to form a belief as to the truth of the
4 allegations in Paragraphs 8.1-8.4, and, therefore, denies the same.
5

6 **IX. FOURTH CLAIM: BREACH OF CONTRACT AGAINST PROPERTY**
7 **INSURER DEFENDANTS**

8 9.1 EMPLOYERS MUTUAL repeats and realleges its answers to Paragraphs 1.1 through
9 8.4 as though fully set forth here.

10 9.2 EMPLOYERS MUTUAL denies each and every allegation against it in Paragraph
11 9.2. EMPLOYERS MUTUAL is without knowledge or information sufficient to form a belief as
12 to the truth of the remaining allegations in Paragraph 9.2 concerning other defendants, and,
13 therefore, denies the same.

14 9.3 EMPLOYERS MUTUAL denies each and every allegation directed against it in
15 Paragraph 9.3. EMPLOYERS MUTUAL is without knowledge or information sufficient to form
16 a belief as to the truth of the remaining allegations in Paragraph 9.3 concerning other defendants,
17 and, therefore, denies the same.

18 9.4 EMPLOYERS MUTUAL denies each and every allegation directed against it in
19 Paragraph 9.4. EMPLOYERS MUTUAL is without knowledge or information sufficient to form
20 a belief as to the truth of the remaining allegations in Paragraph 9.4 concerning other defendants,
21 and, therefore, denies the same.
22

23 **X. PRAYER FOR RELIEF**

24
25 10.1 The allegations in Paragraph 10.1 are narrative and state legal conclusions to which
26 no response is required. To the extent that a response is deemed required, EMPLOYERS MUTUAL
27

1 denies that Plaintiff is entitled to any relief.

2 10.2 The allegations in Paragraph 10.2 are narrative and state legal conclusions to which
3 no response is required. To the extent that a response is deemed required, EMPLOYERS MUTUAL
4 denies that Plaintiff is entitled to any money damages, pre-judgment interest, or post-judgment
5 interest from EMPLOYERS MUTUAL.
6

7 10.3 The allegations in Paragraph 10.3 are narrative and state legal conclusions to which
8 no response is required. To the extent that a response is deemed required, EMPLOYERS MUTUAL
9 denies that Plaintiff is entitled to attorneys' fees or costs from EMPLOYERS MUTUAL.

10 10.4 The allegations in Paragraph 10.4 are narrative and state legal conclusions to which
11 no response is required. To the extent that a response is deemed required, EMPLOYERS MUTUAL
12 denies that Plaintiff is entitled to any other relief against EMPLOYERS MUTUAL.
13

14 AFFIRMATIVE DEFENSES

15 By way of further answer, and as affirmative defenses to each of the claims set forth in the
16 Complaint, EMPLOYERS MUTUAL asserts as follows:

17 FIRST AFFIRMATIVE DEFENSE

18 Plaintiff's Complaint fails to state a cause of action upon which relief may be granted against
19 this Defendant.
20

21 SECOND AFFIRMATIVE DEFENSE

22 Plaintiff has otherwise refused or failed to comply with conditions precedent to suit under
23 this Defendant's insurance policies, including, without limitation: failure to afford this Defendant
24 the opportunity to investigate Plaintiff's claims, failure to submit the claims in a timely fashion,
25 failure to comply with service of suit requirements, failure to properly submit a proof of loss, and
26 failure to comply with other related pre-suit conditions of the policies, thereby barring Plaintiff's
27

1 claims.

2 THIRD AFFIRMATIVE DEFENSE

3 Plaintiff's claims are precluded to the extent that those claims fail to assert physical loss
4 or damage to insured property caused by a covered peril (or covered cause of loss) during the
5 policy period.
6

7 FOURTH AFFIRMATIVE DEFENSE

8 Plaintiff's claims are barred to the extent that Plaintiff was aware or reasonably should
9 have been aware of alleged contamination to its property prior to the inception of this
10 Defendant's insurance policies as there was no "risk of loss" or no fortuitous loss.
11

12 FIFTH AFFIRMATIVE DEFENSE

13 Plaintiff's claims are precluded to the extent that they are not the result of fortuitous
14 events, but are merely the result of the ordinary business conduct and operating conduct of
15 Plaintiff.
16

17 SIXTH AFFIRMATIVE DEFENSE

18 Plaintiff's claims are barred in whole or in part by the contractual limitations provided in
19 the policies of insurance issued by this Defendant or by the applicable Statute of Limitations.
20

21 SEVENTH AFFIRMATIVE DEFENSE

22 Plaintiff's claims are barred under the equitable doctrines of estoppel, laches and waiver.
23

24 EIGHTH AFFIRMATIVE DEFENSE

25 Plaintiff failed to submit timely notice of claim to EMPLOYERS MUTUAL and, therefore,
26 coverage under EMPLOYERS MUTUAL's policies is barred.
27

NINTH AFFIRMATIVE DEFENSE

1 To the extent that some or all of the matters for which coverage is sought under this
2 Defendant's insurance policies are in the nature of fines, penalties, punitive or exemplary
3 damages, said claims are barred by this Defendant's policies and/or public policy.

4
5 TENTH AFFIRMATIVE DEFENSE

6 This Defendant's first-party property policies do not provide coverage for alleged losses
7 that pre-date and/or post-date any of its first-party property policies. Plaintiff's claimed losses are
8 barred to the extent that they did not occur during the period when this Defendant's first-party
9 property policies were in effect.

10
11 ELEVENTH AFFIRMATIVE DEFENSE

12 Plaintiff's claims are precluded to the extent that loss was caused by the wrongful and/or
13 intentional conduct of Plaintiff or its officers, employees and/or agents.

14
15 TWELFTH AFFIRMATIVE DEFENSE

16 The Court lacks subject matter jurisdiction as to certain of this Defendant's policies; as
17 Plaintiff's claims present no actual case or controversy as to these policies as required under the
18 Washington Uniform Declaratory Judgment Act, RCW 7.24, *et seq.* or otherwise.

19
20 THIRTEENTH AFFIRMATIVE DEFENSE

21 Plaintiff's claims are precluded to the extent that Plaintiff has failed to mitigate, minimize
22 or avoid any losses it allegedly sustained and recovery against this Defendant, if any, must be
23 reduced by that amount.

24
25 FOURTEENTH AFFIRMATIVE DEFENSE

26 To the extent to which this Court finds coverage for Plaintiff's claims (which this
27 defendant denies), then, to the extent that the Plaintiff has been compensated for its claimed losses
through other policies of insurance, settlement recoveries or otherwise for the same loss(es),

1 EMPLOYERS MUTUAL's policies only apply, if at all, after the application of a credit to
2 EMPLOYERS MUTUAL for such compensation received by Plaintiff.

3 FIFTEENTH AFFIRMATIVE DEFENSE

4 To the extent that Plaintiff's claims involve damage to land and water, including water
5 in, beneath or on land, the claims are not insured under this Defendant's Policies since land and
6 water are not insured property under this Defendant's Policies.
7

8 SIXTEENTH AFFIRMATIVE DEFENSE

9 Plaintiff's claims are barred to the extent Plaintiff seeks coverage for loss or damage to
10 property in which it did not have an insurable interest at the time of its alleged loss.
11

12 SEVENTEENTH AFFIRMATIVE DEFENSE

13 Plaintiff's claims are barred to the extent Plaintiff seeks coverage for locations not insured
14 in this Defendant's policies of insurance.

15 EIGHTEENTH AFFIRMATIVE DEFENSE

16 Plaintiff's claims are barred against this Defendant, in whole or in part, because Plaintiff
17 has impaired this Defendant's right of subrogation.
18

19 NINETEENTH AFFIRMATIVE DEFENSE

20 To the extent to which this Court finds coverage for Plaintiff's claims (which this
21 Defendant denies), then this Defendant's liability is limited to its percentage share of any such
22 alleged loss which reaches the layer of coverage stated in its policies of insurance after
23 application of all deductibles and all underlying coverage limits.
24

25 TWENTIETH AFFIRMATIVE DEFENSE

26 To the extent that this Court finds coverage under this Defendant's insurance policies
27 (which this Defendant denies), then each event of physical loss or damage is subject to the

1 application of the deductible for every occurrence of physical loss or physical damage to insured
2 property which occurred during the policy period.

3 TWENTY-FIRST AFFIRMATIVE DEFENSE

4 Plaintiff's claims are barred and this Defendant's policies are void *ab initio* to the extent
5 that the Plaintiff did not disclose material information to this Defendant's underwriters regarding
6 known losses and or physical damage which had already occurred prior to this Defendant's
7 issuance of its policies to the Plaintiff. Plaintiff's claims are also barred and this Defendant's
8 policies are void *ab initio* to the extent that the Plaintiff is seeking to recover insurance proceeds
9 under this Defendant's policies which were procured through misrepresentation or the failure to
10 disclose material information to this Defendant at any time.

11 TWENTY-SECOND AFFIRMATIVE DEFENSE

12 Plaintiff's Complaint does not describe Plaintiff's claims with sufficient particularity to
13 enable this Defendant to determine all of its defenses to the Complaint. This Defendant
14 specifically reserves its right to plead additional defenses which may come to light during the
15 course of this litigation, but which are not determinable by this Defendant because of Plaintiff's
16 failure to comply with pre-suit conditions, Plaintiff's lack of specificity in its Complaint, or
17 otherwise.

18 PRAYER FOR RELIEF

19 WHEREFORE, EMPLOYERS MUTUAL prays that judgment be entered in its favor and
20 against Plaintiff as follows:

- 21
- 22 1. Dismissing with prejudice Plaintiff's Complaint against EMPLOYERS MUTUAL
23 in its entirety;
 - 24 2. Declaring that EMPLOYERS MUTUAL did not provide first-party property
25
 - 26
 - 27

1 insurance coverage to the Plaintiff for the matters asserted in the Complaint;

2 3. Awarding EMPLOYERS MUTUAL its costs and attorneys fees; and

3 4. Awarding EMPLOYERS MUTUAL such other and further relief as this Court deems
4 just and proper.
5

6 **JURY DEMAND**

7 EMPLOYERS MUTUAL demands trial by jury.
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27

1
2 DATED this 27th day of March, 1998.
3
4

5 BY: 

6 LAWRENCE D. MASON

(Admitted *pro hac vice*)

7 DAAR, FISHER, KANARIS & VANEK, P.C.

200 South Wacker Drive, Suite 3350

8 Chicago, Illinois 60606

9 Phone: (312) 474-1400

Fax: (312) 474-1410

10
11 BY: 

12 MICHAEL E. RICKETTS

(WSBA# 9387)

13 PEERY HISCOCK PIERSON

14 KINGMAN & PEABODY, P.S.

505 Madison Street, Suite 300

15 Seattle, WA 98104

16 Phone: (206) 622-1264

17 Fax: (206) 292-2961

18 Attorneys for Defendant **PACIFIC MUTUAL MARINE OFFICE, INC.**, as Managing General
19 Agent for **EMPLOYERS MUTUAL CASUALTY COMPANY**
20
21
22
23
24
25
26
27

1
2 DATED this 27th day of March, 1998.
3
4

5 BY:



6 LAWRENCE D. MASON

(Admitted *pro hac vice*)

7 DAAR, FISHER, KANARIS & VANEK, P.C.

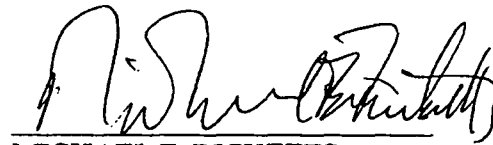
200 South Wacker Drive, Suite 3350

8 Chicago, Illinois 60606

9 Phone: (312) 474-1400

Fax: (312) 474-1410

10
11
12 BY:



13 MICHAEL E. RICKETTS

(WSBA# 9387)

14 PEERY HISCOCK PIERSON

KINGMAN & PEABODY, P.S.

15 505 Madison Street, Suite 300

16 Seattle, WA 98104

Phone: (206) 622-1264

17 Fax: (206) 292-2961

18 Attorneys for Defendant **EMPLOYERS INSURANCE OF WAUSAU, A Mutual Company**
19
20
21
22
23
24
25
26
27

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27

PRAYER FOR RELIEF

WHEREFORE, WAUSAU prays that judgment be entered in its favor and against Plaintiff as follows:

1. Dismissing with prejudice Plaintiff's Complaint against WAUSAU in its entirety;
2. Declaring that WAUSAU did not provide first-party property insurance coverage to the Plaintiff for the matters asserted in the Complaint;
3. Awarding WAUSAU its costs and attorneys fees; and
4. Awarding WAUSAU such other and further relief as this Court deems just and proper.

JURY DEMAND

WAUSAU demands trial by jury.

1 Defendant denies), then this Defendant's liability is limited to its percentage share of any such
2 alleged loss which reaches the layer of coverage stated in its policies of insurance after
3 application of all deductibles and all underlying coverage limits.

4
5 TWENTIETH AFFIRMATIVE DEFENSE

6 To the extent that this Court finds coverage under this Defendant's insurance policies
7 (which this Defendant denies), then each event of physical loss or damage is subject to the
8 application of the deductible for every occurrence of physical loss or physical damage to insured
9 property which occurred during the policy period.

10 TWENTY-FIRST AFFIRMATIVE DEFENSE

11 Plaintiff's claims are barred and this Defendant's policies are void *ab initio* to the extent
12 that the Plaintiff did not disclose material information to this Defendant's underwriters regarding
13 known losses and or physical damage which had already occurred prior to this Defendant's
14 issuance of its policies to the Plaintiff. Plaintiff's claims are also barred and this Defendant's
15 policies are void *ab initio* to the extent that the Plaintiff is seeking to recover insurance proceeds
16 under this Defendant's policies which were procured through misrepresentation or the failure to
17 disclose material information to this Defendant at any time.

18
19 TWENTY-SECOND AFFIRMATIVE DEFENSE

20 Plaintiff's Complaint does not describe Plaintiff's claims with sufficient particularity to
21 enable this Defendant to determine all of its defenses to the Complaint. This Defendant
22 specifically reserves its right to plead additional defenses which may come to light during the
23 course of this litigation, but which are not determinable by this Defendant because of Plaintiff's
24 failure to comply with pre-suit conditions, Plaintiff's lack of specificity in its Complaint, or
25 otherwise.
26
27

1 or avoid any losses it allegedly sustained and recovery against this Defendant, if any, must be
2 reduced by that amount.

3 FOURTEENTH AFFIRMATIVE DEFENSE

4 To the extent to which this Court finds coverage for Plaintiff's claims (which this
5 defendant denies), then, to the extent that the Plaintiff has been compensated for its claimed losses
6 through other policies of insurance, settlement recoveries or otherwise for the same loss(es),
7 WAUSAU's policies only apply, if at all, after the application of a credit to WAUSAU for such
8 compensation received by Plaintiff.
9

10 FIFTEENTH AFFIRMATIVE DEFENSE

11 To the extent that Plaintiff's claims involve damage to land and water, including water
12 in, beneath or on land, the claims are not insured under this Defendant's Policies since land and
13 water are not insured property under this Defendant's Policies.
14

15 SIXTEENTH AFFIRMATIVE DEFENSE

16 Plaintiff's claims are barred to the extent Plaintiff seeks coverage for loss or damage to
17 property in which it did not have an insurable interest at the time of its alleged loss.
18

19 SEVENTEENTH AFFIRMATIVE DEFENSE

20 Plaintiff's claims are barred to the extent Plaintiff seeks coverage for locations not insured
21 in this Defendant's policies of insurance.

22 EIGHTEENTH AFFIRMATIVE DEFENSE

23 Plaintiff's claims are barred against this Defendant, in whole or in part, because Plaintiff
24 has impaired this Defendant's right of subrogation.
25

26 NINETEENTH AFFIRMATIVE DEFENSE

27 To the extent to which this Court finds coverage for Plaintiff's claims (which this

1 SEVENTH AFFIRMATIVE DEFENSE

2 Plaintiff's claims are barred under the equitable doctrines of estoppel, laches and waiver.

3 EIGHTH AFFIRMATIVE DEFENSE

4
5 Plaintiff failed to submit timely notice of claim to WAUSAU and, therefore, coverage under
6 WAUSAU's policies is barred.

7 NINTH AFFIRMATIVE DEFENSE

8 To the extent that some or all of the matters for which coverage is sought under this
9 Defendant's insurance policies are in the nature of fines, penalties, punitive or exemplary
10 damages, said claims are barred by this Defendant's policies and/or public policy.

11 TENTH AFFIRMATIVE DEFENSE

12
13 This Defendant's first-party property policies do not provide coverage for alleged losses
14 that pre-date and/or post-date any of its first-party property policies. Plaintiff's claimed losses are
15 barred to the extent that they did not occur during the period when this Defendant's first-party
16 property policies were in effect.

17 ELEVENTH AFFIRMATIVE DEFENSE

18
19 Plaintiff's claims are precluded to the extent that loss was caused by the wrongful and/or
20 intentional conduct of Plaintiff or its officers, employees and/or agents.

21 TWELFTH AFFIRMATIVE DEFENSE

22 The Court lacks subject matter jurisdiction as to certain of this Defendant's policies, as
23 Plaintiff's claims present no actual case or controversy as to these policies as required under the
24 Washington Uniform Declaratory Judgment Act, RCW 7.24, *et seq.* or otherwise.

25 THIRTEENTH AFFIRMATIVE DEFENSE

26
27 Plaintiff's claims are precluded to the extent that Plaintiff has failed to mitigate, minimize

1 SECOND AFFIRMATIVE DEFENSE

2 Plaintiff has otherwise refused or failed to comply with conditions precedent to suit under
3 this Defendant's insurance policies, including, without limitation: failure to afford this Defendant
4 the opportunity to investigate Plaintiff's claims, failure to submit the claims in a timely fashion,
5 failure to comply with service of suit requirements, failure to properly submit a proof of loss, and
6 failure to comply with other related pre-suit conditions of the policies, thereby barring Plaintiff's
7 claims.
8

9 THIRD AFFIRMATIVE DEFENSE

10 Plaintiff's claims are precluded to the extent that those claims fail to assert physical loss
11 or damage to insured property caused by a covered peril (or covered cause of loss) during the
12 policy period.
13

14 FOURTH AFFIRMATIVE DEFENSE

15 Plaintiff's claims are barred to the extent that Plaintiff was aware or reasonably should
16 have been aware of alleged contamination to its property prior to the inception of this
17 Defendant's insurance policies as there was no "risk of loss" or no fortuitous loss.
18

19 FIFTH AFFIRMATIVE DEFENSE

20 Plaintiff's claims are precluded to the extent that they are not the result of fortuitous
21 events, but are merely the result of the ordinary business conduct and operating conduct of
22 Plaintiff.
23

24 SIXTH AFFIRMATIVE DEFENSE

25 Plaintiff's claims are barred in whole or in part by the contractual limitations provided in
26 the policies of insurance issued by this Defendant or by the applicable Statute of Limitations.
27

1 9.4 WAUSAU denies each and every allegation directed against it in Paragraph 9.4.
2 WAUSAU is without knowledge or information sufficient to form a belief as to the truth of the
3 remaining allegations in Paragraph 9.4 concerning other defendants, and, therefore, denies the same.
4

5 **X. PRAYER FOR RELIEF**

6 10.1 The allegations in Paragraph 10.1 are narrative and state legal conclusions to which
7 no response is required. To the extent that a response is deemed required, WAUSAU denies that
8 Plaintiff is entitled to any relief.

9 10.2 The allegations in Paragraph 10.2 are narrative and state legal conclusions to which
10 no response is required. To the extent that a response is deemed required, WAUSAU denies that
11 Plaintiff is entitled to any money damages, pre-judgment interest, or post-judgment interest from
12 WAUSAU.
13

14 10.3 The allegations in Paragraph 10.3 are narrative and state legal conclusions to which
15 no response is required. To the extent that a response is deemed required, WAUSAU denies that
16 Plaintiff is entitled to attorneys' fees or costs from WAUSAU.

17 10.4 The allegations in Paragraph 10.4 are narrative and state legal conclusions to which
18 no response is required. To the extent that a response is deemed required, WAUSAU denies that
19 Plaintiff is entitled to any other relief against WAUSAU.
20

21 **AFFIRMATIVE DEFENSES**

22 By way of further answer, and as affirmative defenses to each of the claims set forth in the
23 Complaint, WAUSAU asserts as follows:

24 **FIRST AFFIRMATIVE DEFENSE**

25 Plaintiff's Complaint fails to state a cause of action upon which relief may be granted against
26 this Defendant.
27

1 or information sufficient to form a belief as to the truth of the remaining allegations in Paragraph
2 7.3 concerning other defendants, and, therefore, denies the same.

3 7.4 The allegations in Paragraph 7.4 are narrative and state legal conclusions to which
4 no response is required. To the extent that a response is deemed required, WAUSAU denies each
5 and every allegation against it in Paragraph 7.4 and WAUSAU is without knowledge or information
6 sufficient to form a belief as to the truth of the remaining allegations in Paragraph 7.4 concerning
7 other defendants, and, therefore, denies the same.
8

9 **VII. THIRD CLAIM: BREACH OF CONTRACT AGAINST CGL**
10 **INSURER DEFENDANTS**

11 8.1-8.4 The allegations asserted in Paragraphs 8.1-8.4 are not directed against
12 WAUSAU. Therefore, no response from WAUSAU to the allegations in Paragraphs 8.1-8.4 is
13 required. To the extent that a response is deemed required, WAUSAU is without knowledge or
14 information sufficient to form a belief as to the truth of the allegations in Paragraphs 8.1-8.4, and,
15 therefore, denies the same.
16

17 **IX. FOURTH CLAIM: BREACH OF CONTRACT AGAINST PROPERTY**
18 **INSURER DEFENDANTS**

19 9.1 WAUSAU repeats and realleges its answers to Paragraphs 1.1 through 8.4 as though
20 fully set forth here.

21 9.2 WAUSAU denies each and every allegation against it in Paragraph 9.2. WAUSAU
22 is without knowledge or information sufficient to form a belief as to the truth of the remaining
23 allegations in Paragraph 9.2 concerning other defendants, and, therefore, denies the same.

24 9.3 WAUSAU denies each and every allegation directed against it in Paragraph 9.3.
25 WAUSAU is without knowledge or information sufficient to form a belief as to the truth of the
26 remaining allegations in Paragraph 9.3 concerning other defendants, and, therefore, denies the same.
27

5.3, and, therefore, denies the same.

5.4 WAUSAU denies each and every allegation against it in Paragraph 5.4. WAUSAU is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations in Paragraph 5.4 concerning other defendants, and, therefore, denies the same.

5.5 WAUSAU denies each and every allegation against it in Paragraph 5.5. WAUSAU is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations in Paragraph 5.5 concerning other defendants, and, therefore, denies the same.

**VI. FIRST CLAIM: DECLARATORY JUDGMENT AGAINST THE
CGL INSURER DEFENDANTS**

6.1-6.5 The allegations asserted in Paragraphs 6.1-6.5 are not directed against WAUSAU. Therefore, no response from WAUSAU to the allegations in Paragraphs 6.1-6.5 is required. To the extent that a response is deemed required, WAUSAU is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraphs 6.1-6.5, and, therefore, denies the same.

**VII. SECOND CLAIM: DECLARATORY JUDGMENT AGAINST PROPERTY
INSURER DEFENDANTS ONLY**

7.1 WAUSAU repeats and realleges its answers to Paragraphs 1.1 through 6.5 as though fully set forth here.

7.2 WAUSAU denies each and every allegation against it in Paragraph 7.2. WAUSAU is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations in Paragraph 7.2 concerning other defendants, and, therefore, denies the same.

7.3 WAUSAU admits only that through its answer to the Complaint it disputes one or more of WNG's contentions set forth in the preceding paragraphs. WAUSAU denies each and every remaining allegation directed against it in Paragraph 7.3. WAUSAU is without knowledge

1 without knowledge or information sufficient to form a belief as to the truth of the allegations in
2 Paragraph 3.3, and, therefore, denies the same.

3
4 **IV. THE INSURANCE POLICIES AT ISSUE**

5 4.1 The allegations in Paragraph 4.1 are not directed against WAUSAU, and, therefore,
6 no response is required. To the extent that a response is deemed required, WAUSAU is without
7 knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph
8 4.1, and, therefore, denies the same.

9 4.2 WAUSAU admits that it issued a first-party property insurance policy to Washington
10 National Gas Company, Policy No. 2362-07-036844, which was in effect from July 31, 1979 to July
11 31, 1982, and, at all times relevant, this policy was subject solely to its terms, conditions, provisions,
12 limitations, exclusions contained therein, and not otherwise. WAUSAU denies any allegations in
13 Paragraph 4.2 to the contrary. WAUSAU is without knowledge or information sufficient to form
14 a belief as to the truth of the remaining allegations in Paragraph 4.2 concerning other defendants,
15 and, therefore, denies the same.
16

17 **V. UNDERLYING LIABILITIES**

18 5.1 WAUSAU is without knowledge or information sufficient to form a belief as to the
19 truth of the allegations of Paragraph 5.1, including subparagraphs (a)-(f), and, therefore, denies the
20 same.
21

22 5.2 WAUSAU is without knowledge or information sufficient to form a belief as to the
23 truth of the allegations in Paragraph 5.2, and, therefore, denies the same.

24 5.3 The allegations in Paragraph 5.3 are not directed against WAUSAU, and, therefore,
25 no response is required. To the extent that a response is deemed required, WAUSAU is without
26 knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph
27

no response is required. To the extent that a response is deemed required, WAUSAU is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 2.3, and, therefore, denies the same.

2.4 WAUSAU admits that Exhibit B is attached to the Complaint and that it contains various information about the defendant property insurance carriers. WAUSAU admits that it is incorporated in the State of Wisconsin and that its principal place of business is located in Wausau, Wisconsin. WAUSAU is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations in Paragraph 2.4, and, therefore, denies the same.

2.5 The allegations in Paragraph 2.5 are not directed against WAUSAU, and, therefore, no response is required. To the extent that a response is deemed required, WAUSAU is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 2.5, and, therefore, denies the same.

III. JURISDICTION AND VENUE

3.1 The allegations in Paragraph 3.1 are narrative and state legal conclusions, and, therefore, no response is required. To the extent that a response is deemed required, WAUSAU is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 3.1, and, therefore, denies the same.

3.2 The allegations in Paragraph 3.2 are narrative and state legal conclusions, and, therefore, no response is required. To the extent that a response is deemed required, WAUSAU is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 3.2, and, therefore, denies the same.

3.3 The allegations in Paragraph 3.3 are narrative and state legal conclusions, and, therefore, no response is required. To the extent that a response is deemed required, WAUSAU is

FILED

**IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF KING**

PUGET SOUND ENERGY, INC.,

Plaintiffs,

v.

ALBA GENERAL INSURANCE
COMPANY, et al.,

Defendants.

NO. 97-2-29050-3 SEA

WAUSAU'S ANSWER TO
PLAINTIFF'S COMPLAINT

Defendant EMPLOYERS INSURANCE OF WAUSAU, A Mutual Company ("WAUSAU"
by and through its attorneys, in answer to Plaintiff PUGET SOUND ENERGY, INC.'s Complaint
for Declaratory Relief and Money Damages ("Complaint"), states as follows:

I. INTRODUCTION

1.1 The allegations in Paragraph 1.1, including subparagraphs (a) and (b), are narrative
and, therefore, no response is required. To the extent that a response is deemed required, WAUSAU
denies that Plaintiff is entitled to any affirmative relief.

II. THE PARTIES

2.1 WAUSAU is without knowledge or information sufficient to form a belief as to the
truth of the allegations in Paragraph 2.1, and, therefore, denies the same.


2.2 WAUSAU admits the allegations in Paragraph 2.2 only to the extent they are directed
against it. WAUSAU is without knowledge or information sufficient to form a belief as to the truth
of the remaining allegations in Paragraph 2.2, and, therefore, denies the same.

2.3 The allegations in Paragraph 2.3 are not directed against WAUSAU, and, therefore,

ORIGINAL

1
2 DATED this 27th day of March, 1998.
3
4

5 BY:


LAWRENCE D. MASON

(Admitted *pro hac vice*)

DAAR, FISHER, KANARIS & VANEK, P.C.

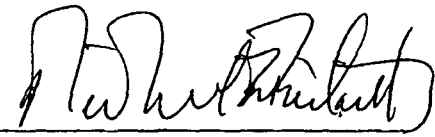
200 South Wacker Drive, Suite 3350

Chicago, Illinois 60606

Phone: (312) 474-1400

Fax: (312) 474-1410
6
7
8
9
10

11 BY:


MICHAEL E. RICKETTS

(WSBA# 9387)

PEERY HISCOCK PIERSON

KINGMAN & PEABODY, P.S.

505 Madison Street, Suite 300

Seattle, WA 98104

Phone: (206) 622-1264

Fax: (206) 292-2961
12
13
14
15
16
17

18 Attorneys for Defendant ZURICH AMERICAN INSURANCE COMPANY OF ILLINOIS
19
20
21
22
23
24
25
26
27

PRAYER FOR RELIEF

WHEREFORE, ZURICH prays that judgment be entered in its favor and against Plaintiff as follows:

1. Dismissing with prejudice Plaintiff's Complaint against ZURICH in its entirety;
2. Declaring that ZURICH did not provide first-party property insurance coverage to the Plaintiff for the matters asserted in the Complaint;
3. Awarding ZURICH its costs and attorneys fees; and
4. Awarding ZURICH such other and further relief as this Court deems just and proper.

JURY DEMAND

ZURICH demands trial by jury.

1 Defendant denies), then this Defendant's liability is limited to its percentage share of any such
2 alleged loss which reaches the layer of coverage stated in its policies of insurance after
3 application of all deductibles and all underlying coverage limits.

4
5 TWENTIETH AFFIRMATIVE DEFENSE

6 To the extent that this Court finds coverage under this Defendant's insurance policies
7 (which this Defendant denies), then each event of physical loss or damage is subject to the
8 application of the deductible for every occurrence of physical loss or physical damage to insured
9 property which occurred during the policy period.

10 TWENTY-FIRST AFFIRMATIVE DEFENSE

11 Plaintiff's claims are barred and this Defendant's policies are void *ab initio* to the extent
12 that the Plaintiff did not disclose material information to this Defendant's underwriters regarding
13 known losses and or physical damage which had already occurred prior to this Defendant's
14 issuance of its policies to the Plaintiff. Plaintiff's claims are also barred and this Defendant's
15 policies are void *ab initio* to the extent that the Plaintiff is seeking to recover insurance proceeds
16 under this Defendant's policies which were procured through misrepresentation or the failure to
17 disclose material information to this Defendant at any time.

18
19
20 TWENTY-SECOND AFFIRMATIVE DEFENSE

21 Plaintiff's Complaint does not describe Plaintiff's claims with sufficient particularity to
22 enable this Defendant to determine all of its defenses to the Complaint. This Defendant
23 specifically reserves its right to plead additional defenses which may come to light during the
24 course of this litigation, but which are not determinable by this Defendant because of Plaintiff's
25 failure to comply with pre-suit conditions, Plaintiff's lack of specificity in its Complaint, or
26 otherwise.
27

1 or avoid any losses it allegedly sustained and recovery against this Defendant, if any, must be
2 reduced by that amount.

3 FOURTEENTH AFFIRMATIVE DEFENSE

4 To the extent to which this Court finds coverage for Plaintiff's claims (which this
5 defendant denies), then, to the extent that the Plaintiff has been compensated for its claimed losses
6 through other policies of insurance, settlement recoveries or otherwise for the same loss(es),
7 ZURICH's policies only apply, if at all, after the application of a credit to ZURICH for such
8 compensation received by Plaintiff.
9

10 FIFTEENTH AFFIRMATIVE DEFENSE

11 To the extent that Plaintiff's claims involve damage to land and water, including water
12 in, beneath or on land, the claims are not insured under this Defendant's Policies since land and
13 water are not insured property under this Defendant's Policies.
14

15 SIXTEENTH AFFIRMATIVE DEFENSE

16 Plaintiff's claims are barred to the extent Plaintiff seeks coverage for loss or damage to
17 property in which it did not have an insurable interest at the time of its alleged loss.
18

19 SEVENTEENTH AFFIRMATIVE DEFENSE

20 Plaintiff's claims are barred to the extent Plaintiff seeks coverage for locations not insured
21 in this Defendant's policies of insurance.

22 EIGHTEENTH AFFIRMATIVE DEFENSE

23 Plaintiff's claims are barred against this Defendant, in whole or in part, because Plaintiff
24 has impaired this Defendant's right of subrogation.
25

26 NINETEENTH AFFIRMATIVE DEFENSE

27 To the extent to which this Court finds coverage for Plaintiff's claims (which this

1 SEVENTH AFFIRMATIVE DEFENSE

2 Plaintiff's claims are barred under the equitable doctrines of estoppel, laches and waiver.

3 EIGHTH AFFIRMATIVE DEFENSE

4
5 Plaintiff failed to submit timely notice of claim to ZURICH and, therefore, coverage under
6 ZURICH's policies is barred.

7 NINTH AFFIRMATIVE DEFENSE

8 To the extent that some or all of the matters for which coverage is sought under this
9 Defendant's insurance policies are in the nature of fines, penalties, punitive or exemplary
10 damages, said claims are barred by this Defendant's policies and/or public policy.

11 TENTH AFFIRMATIVE DEFENSE

12
13 This Defendant's first-party property policies do not provide coverage for alleged losses
14 that pre-date and/or post-date any of its first-party property policies. Plaintiff's claimed losses are
15 barred to the extent that they did not occur during the period when this Defendant's first-party
16 property policies were in effect.

17 ELEVENTH AFFIRMATIVE DEFENSE

18
19 Plaintiff's claims are precluded to the extent that loss was caused by the wrongful and/or
20 intentional conduct of Plaintiff or its officers, employees and/or agents.

21 TWELFTH AFFIRMATIVE DEFENSE

22 The Court lacks subject matter jurisdiction as to certain of this Defendant's policies, as
23 Plaintiff's claims present no actual case or controversy as to these policies as required under the
24 Washington Uniform Declaratory Judgment Act, RCW 7.24, *et seq.* or otherwise.

25 THIRTEENTH AFFIRMATIVE DEFENSE

26
27 Plaintiff's claims are precluded to the extent that Plaintiff has failed to mitigate, minimize

1 this Defendant.

2 SECOND AFFIRMATIVE DEFENSE

3 Plaintiff has otherwise refused or failed to comply with conditions precedent to suit under
4 this Defendant's insurance policies, including, without limitation: failure to afford this Defendant
5 the opportunity to investigate Plaintiff's claims, failure to comply with service of suit
6 requirements, failure to properly submit a proof of loss, and failure to comply with other related
7 pre-suit conditions of the policies, thereby barring Plaintiff's claims.
8

9 THIRD AFFIRMATIVE DEFENSE

10 Plaintiff's claims are precluded to the extent that those claims fail to assert physical loss
11 or damage to insured property caused by a covered peril (or covered cause of loss) during the
12 policy period.
13

14 FOURTH AFFIRMATIVE DEFENSE

15 Plaintiff's claims are barred to the extent that Plaintiff was aware or reasonably should
16 have been aware of alleged contamination to its property prior to the inception of this
17 Defendant's insurance policies as there was no "risk of loss" or no fortuitous loss.
18

19 FIFTH AFFIRMATIVE DEFENSE

20 Plaintiff's claims are precluded to the extent that they are not the result of fortuitous
21 events, but are merely the result of the ordinary business conduct and operating conduct of
22 Plaintiff.
23

24 SIXTH AFFIRMATIVE DEFENSE

25 Plaintiff's claims are barred in whole or in part by the contractual limitations provided in
26 the policies of insurance issued by this Defendant or by the applicable Statute of Limitations.
27

1 remaining allegations in Paragraph 9.3 concerning other defendants, and, therefore, denies the same.

2 9.4 ZURICH denies each and every allegation directed against it in Paragraph 9.4.
3 ZURICH is without knowledge or information sufficient to form a belief as to the truth of the
4 remaining allegations in Paragraph 9.4 concerning other defendants, and, therefore, denies the same.
5

6 **X. PRAYER FOR RELIEF**

7 10.1 The allegations in Paragraph 10.1 are narrative and state legal conclusions to which
8 no response is required. To the extent that a response is deemed required, ZURICH denies that
9 Plaintiff is entitled to any relief.

10 10.2 The allegations in Paragraph 10.2 are narrative and state legal conclusions to which
11 no response is required. To the extent that a response is deemed required, ZURICH denies that
12 Plaintiff is entitled to any money damages, pre-judgment interest, or post-judgment interest from
13 ZURICH.
14

15 10.3 The allegations in Paragraph 10.3 are narrative and state legal conclusions to which
16 no response is required. To the extent that a response is deemed required, ZURICH denies that
17 Plaintiff is entitled to attorneys' fees or costs from ZURICH.
18

19 10.4 The allegations in Paragraph 10.4 are narrative and state legal conclusions to which
20 no response is required. To the extent that a response is deemed required, ZURICH denies that
21 Plaintiff is entitled to any other relief against ZURICH.

22 **AFFIRMATIVE DEFENSES**

23 By way of further answer, and as affirmative defenses to each of the claims set forth in the
24 Complaint, ZURICH asserts as follows:

25 **FIRST AFFIRMATIVE DEFENSE**

26 Plaintiff's Complaint fails to state a cause of action upon which relief may be granted against
27

1 remaining allegation directed against it in Paragraph 7.3. ZURICH is without knowledge or
2 information sufficient to form a belief as to the truth of the remaining allegations in Paragraph 7.3
3 concerning other defendants, and, therefore, denies the same.

4
5 7.4 The allegations in Paragraph 7.4 are narrative and state legal conclusions to which
6 no response is required. To the extent that a response is deemed required, ZURICH denies each and
7 every allegation against it in Paragraph 7.4 and ZURICH is without knowledge or information
8 sufficient to form a belief as to the truth of the remaining allegations in Paragraph 7.4 concerning
9 other defendants, and, therefore, denies the same.

10 **VII. THIRD CLAIM: BREACH OF CONTRACT AGAINST CGL**
11 **INSURER DEFENDANTS**

12 8.1-8.4 The allegations asserted in Paragraphs 8.1-8.4 are not directed against
13 ZURICH. Therefore, no response from ZURICH to the allegations in Paragraphs 8.1-8.4 is required.
14 To the extent that a response is deemed required, ZURICH is without knowledge or information
15 sufficient to form a belief as to the truth of the allegations in Paragraphs 8.1-8.4, and, therefore,
16 denies the same.

17
18 **IX. FOURTH CLAIM: BREACH OF CONTRACT AGAINST PROPERTY**
19 **INSURER DEFENDANTS**

20 9.1 ZURICH repeats and realleges its answers to Paragraphs 1.1 through 8.4 as though
21 fully set forth here.

22 9.2 ZURICH denies each and every allegation against it in Paragraph 9.2. ZURICH is
23 without knowledge or information sufficient to form a belief as to the truth of the remaining
24 allegations in Paragraph 9.2 concerning other defendants, and, therefore, denies the same.

25 9.3 ZURICH denies each and every allegation directed against it in Paragraph 9.3.
26 ZURICH is without knowledge or information sufficient to form a belief as to the truth of the
27

1 knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph
2 5.3, and, therefore, denies the same.

3 5.4 ZURICH denies each and every allegation against it in Paragraph 5.4. ZURICH is
4 without knowledge or information sufficient to form a belief as to the truth of the remaining
5 allegations in Paragraph 5.4 concerning other defendants, and, therefore, denies the same.
6

7 5.5 ZURICH denies each and every allegation against it in Paragraph 5.5. ZURICH is
8 without knowledge or information sufficient to form a belief as to the truth of the remaining
9 allegations in Paragraph 5.5 concerning other defendants, and, therefore, denies the same.
10

11 **VI. FIRST CLAIM: DECLARATORY JUDGMENT AGAINST THE**
12 **CGL INSURER DEFENDANTS**

13 6.1-6.5 The allegations asserted in Paragraphs 6.1-6.5 are not directed against
14 ZURICH. Therefore, no response from ZURICH to the allegations in Paragraphs 6.1-6.5 is required.
15 To the extent that a response is deemed required, ZURICH is without knowledge or information
16 sufficient to form a belief as to the truth of the allegations in Paragraphs 6.1-6.5, and, therefore,
17 denies the same.

18 **VII. SECOND CLAIM: DECLARATORY JUDGMENT AGAINST PROPERTY**
19 **INSURER DEFENDANTS ONLY**

20 7.1 ZURICH repeats and realleges its answers to Paragraphs 1.1 through 6.5 as though
21 fully set forth here.

22 7.2 ZURICH denies each and every allegation against it in Paragraph 7.2. ZURICH is
23 without knowledge or information sufficient to form a belief as to the truth of the remaining
24 allegations in Paragraph 7.2 concerning other defendants, and, therefore, denies the same.
25

26 7.3 ZURICH admits only that through its answer to the Complaint it disputes one or more
27 of WNG's contentions set forth in the preceding paragraphs. ZURICH denies each and every

1 therefore, no response is required. To the extent that a response is deemed required, ZURICH is
2 without knowledge or information sufficient to form a belief as to the truth of the allegations in
3 Paragraph 3.3, and, therefore, denies the same.
4

5 IV. THE INSURANCE POLICIES AT ISSUE

6 4.1 The allegations in Paragraph 4.1 are not directed against ZURICH, and, therefore,
7 no response is required. To the extent that a response is deemed required, ZURICH is without
8 knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph
9 4.1, and, therefore, denies the same.

10 4.2 ZURICH admits that it issued a first-party property insurance policy to Washington
11 National Gas Company, Policy No. IF7039672, which was in effect from July 31, 1979 to July 31,
12 1982, and, at all times relevant, this policy was subject solely to its terms, conditions, provisions,
13 limitations, exclusions contained therein, and not otherwise. ZURICH denies any allegations in
14 Paragraph 4.2 to the contrary. ZURICH is without knowledge or information sufficient to form a
15 belief as to the truth of the remaining allegations in Paragraph 4.2 concerning other defendants, and,
16 therefore, denies the same.
17

18 V. UNDERLYING LIABILITIES

19 5.1 ZURICH is without knowledge or information sufficient to form a belief as to the
20 truth of the allegations of Paragraph 5.1, including subparagraphs (a)-(f), and, therefore, denies the
21 same.
22

23 5.2 ZURICH is without knowledge or information sufficient to form a belief as to the
24 truth of the allegations in Paragraph 5.2, and, therefore, denies the same.
25

26 5.3 The allegations in Paragraph 5.3 are not directed against ZURICH, and, therefore,
27 no response is required. To the extent that a response is deemed required, ZURICH is without

1 2.3 The allegations in Paragraph 2.3 are not directed against ZURICH, and, therefore,
2 no response is required. To the extent that a response is deemed required, ZURICH is without
3 knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph
4 2.3, and, therefore, denies the same.
5

6 2.4 ZURICH admits that Exhibit B is attached to the Complaint and that it contains
7 various information about the defendant property insurance carriers. ZURICH admits that it is
8 incorporated in the State of Illinois and that its principal place of business is located in Schaumburg,
9 Illinois. ZURICH is without knowledge or information sufficient to form a belief as to the truth of
10 the remaining allegations in Paragraph 2.4, and, therefore, denies the same.
11

12 2.5 The allegations in Paragraph 2.5 are not directed against ZURICH, and, therefore,
13 no response is required. To the extent that a response is deemed required, ZURICH is without
14 knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph
15 2.5, and, therefore, denies the same.
16

17 III. JURISDICTION AND VENUE

18 3.1 The allegations in Paragraph 3.1 are narrative and state legal conclusions, and,
19 therefore, no response is required. The extent that a response is deemed required, ZURICH is
20 without knowledge or information sufficient to form a belief as to the truth of the allegations in
21 Paragraph 3.1, and, therefore, denies the same.

22 3.2 The allegations in Paragraph 3.2 are narrative and state legal conclusions, and,
23 therefore, no response is required. To the extent that a response is deemed required, ZURICH is
24 without knowledge or information sufficient to form a belief as to the truth of the allegations in
25 Paragraph 3.2, and, therefore denies the same.
26

27 3.3 The allegations in Paragraph 3.3 are narrative and state legal conclusions, and,

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF KING

PUGET SOUND ENERGY, INC.
SUPERIOR COURT CLERK
SEATTLE, WA

Plaintiffs,

v.

ALBA GENERAL INSURANCE
COMPANY, et al.,

Defendants.

NO. 97-2-29050-3 SEA

ZURICH AMERICAN INSURANCE
COMPANY OF ILLINOIS' ANSWER
TO PLAINTIFF'S COMPLAINT

Defendant ZURICH AMERICAN INSURANCE COMPANY OF ILLINOIS ("ZURICH"),
by and through its attorneys, in answer to Plaintiff PUGET SOUND ENERGY, INC.'s Complaint
for Declaratory Relief and Money Damages ("Complaint"), states as follows:

I. INTRODUCTION

1.1 The allegations in Paragraph 1.1, including subparagraphs (a) and (b), are narrative,
and, therefore, no response is required. To the extent that a response is deemed required, ZURICH
denies that Plaintiff is entitled to any affirmative relief.

II. THE PARTIES

2.1 ZURICH is without knowledge or information sufficient to form a belief as to the
truth of the allegations in Paragraph 2.1, and, therefore, denies the same.

2.2 ZURICH admits the allegations in Paragraph 2.2 only to the extent they are directed
against it. ZURICH is without knowledge or information sufficient to form a belief as to the truth
of the remaining allegations in Paragraph 2.2, and, therefore, denies the same.

ZURICH'S ANSWER TO PLAINTIFF'S COMPLAINT

DAAR, FISHER, KANARIS & VANER, P.C.
200 SOUTH WACKER DRIVE, SUITE 3350
CHICAGO, ILLINOIS 60606

ORIGINAL

0132

AltinoEPA 000160

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

TWENTY-EIGHTH AFFIRMATIVE DEFENSE

To the extent this Court finds coverage for Plaintiff's claims (which Westport denies), then Westport is entitled to allocation and/or apportionment among the other insurers of any amount of coverage.

WHEREFORE, defendant Westport Insurance Corporation prays for judgment as follows:

1. Dismissing Plaintiff's claims against Westport with prejudice;
2. Declaring that Westport did not provide first-party property insurance coverage to Plaintiff for the matters asserted in the complaint;
3. Declaring that Westport recover its costs and expenses of suit incurred herein, including reasonable attorneys' fees; and
4. Awarding Westport such further relief as the Court may deem just and proper.

RESPECTFULLY SUBMITTED, this 28th day of April, 1998.

MERRICK, HOFSTEDT & LINDSEY, P.S.

By

Tyna Ek

Tyna Ek, WSBA #14332

Of Attorneys for Defendant Westport Insurance Corporation as successor-in-interest to Manhattan Fire and Marine Insurance Company

AND

John L. Riedl, admitted *pro hac vice*
Cathie A. Childs, admitted *pro hac vice*
LUCE, FORWARD HAMILTON & SCRIPPS LLP
600 West Broadway, Suite 2600
San Diego, California 92101
tele: (619) 236-1414
facsimile: (619) 232-8311

Attorneys for Defendant Westport Insurance Corporation
as successor-in-interest to Manhattan Fire and Marine
Insurance Company

ANSWER OF DEFENDANT WESTPORT INSURANCE
CORPORATION TO COMPLAINT FOR DECLARATORY RELIEF
AND MONETARY DAMAGES - 10

J. 1990005PLEADITEP1EA

0159

MERRICK, HOFSTEDT & LINDSEY, P.S.
ATTORNEYS AT LAW
710 NINTH AVENUE
SEATTLE, WASHINGTON 98104
(206) 682-0610

AltinoEPA 000161

1 **TWENTY-SECOND AFFIRMATIVE DEFENSE**

2 To the extent the loss involves any property at the location commonly known as Jackson
3 Prairie and more specifically described as being near the intersection of Old Highway 99 and White
4 Pass Highway near Chehalis, Washington, coverage would be precluded under the Westport policy.

5 **TWENTY-THIRD AFFIRMATIVE DEFENSE**

6 To the extent that some or all of the matters for which coverage is sought under the Westport
7 policy are in the nature of fines, penalties, punitive or exemplary damages, said claims are barred by
8 Westport's policy and/or public policy.

9 **TWENTY-FOURTH AFFIRMATIVE DEFENSE**

10 Plaintiff's claims may be precluded by the applicable Statute of Limitations.

11 **TWENTY-FIFTH AFFIRMATIVE DEFENSE**

12 The Court lacks subject matter jurisdiction as to Westport's policy, as Plaintiff's claim
13 presents no actual case or controversy as to the Westport policy as required by the Washington
14 Uniform Declaratory Judgment Act, RCW 7.24, *et seq.* or otherwise.

15 **TWENTY-SIXTH AFFIRMATIVE DEFENSE**

16 To the extent this Court finds coverage for Plaintiff's claims (which Westport denies), then,
17 to the extent Plaintiff has been compensated for its claimed losses through other policies of
18 insurance, settlement recoveries or otherwise for these same losses, Westport's policy will only
19 apply, if at all, after application of a credit for such compensation received by Plaintiff.

20 **TWENTY-SEVENTH AFFIRMATIVE DEFENSE**

21 To the extent the complaint does not describe the loss therein alleged with particularity to
22 enable Westport to determine the defenses (including defenses based upon the terms, conditions,
23 limitations or exclusions of the Westport policy) which may specifically exist to such loss, Westport
24 reserves the right to assert any and all defenses which may pertain to PSE's Complaint once the
25 precise nature of such loss is ascertained.

26
ANSWER OF DEFENDANT WESTPORT INSURANCE
CORPORATION TO COMPLAINT FOR DECLARATORY RELIEF
AND MONETARY DAMAGES - 9

L11900005PLEADITEPIEA

MERRICK, HOFSTEDT & LINDSEY, P.S.
ATTORNEYS AT LAW
710 NINTH AVENUE
SEATTLE, WASHINGTON 98104
(206) 682-0810

0158

AltinoEPA 000162

1 **FOURTEENTH AFFIRMATIVE DEFENSE**

2 To the extent WNG did not commence suit within twelve (12) months next after inception of
3 the loss, coverage is precluded under the Westport policy.

4 **FIFTEENTH AFFIRMATIVE DEFENSE**

5 To the extent WNG has knowingly, voluntarily and willingly waived any rights it might
6 otherwise have against Westport, coverage is precluded under the Westport policy.

7 **SIXTEENTH AFFIRMATIVE DEFENSE**

8 To the extent WNG failed to mitigate its damages, if any, alleged or otherwise, it will be
9 estopped thereby from making or pursuing any claim against Westport thereon.

10 **SEVENTEENTH AFFIRMATIVE DEFENSE**

11 To the extent WNG failed to perform certain conditions precedent to any obligations or
12 indebtedness which Westport might otherwise have had towards WNG, coverage may be affected
13 under the Westport policy.

14 **EIGHTEENTH AFFIRMATIVE DEFENSE**

15 WNG's claims and causes of action are barred under the equitable doctrines of estoppel,
16 laches and waiver.

17 **NINETEENTH AFFIRMATIVE DEFENSE**

18 To the extent WNG's claims were predominantly or efficiently caused by a non-covered risk,
19 coverage would be precluded under the Westport policy.

20 **TWENTIETH AFFIRMATIVE DEFENSE**

21 To the extent there has not been either written agreement between Westport and WNG or a
22 filed award regarding ascertainment of the loss, Westport has no duty to pay for loss under its policy.

23 **TWENTY-FIRST AFFIRMATIVE DEFENSE**

24 To the extent the loss was caused by normal settling or shrinkage of walls, floors or ceilings,
25 coverage would be precluded under the Westport policy.

26
ANSWER OF DEFENDANT WESTPORT INSURANCE
CORPORATION TO COMPLAINT FOR DECLARATORY RELIEF
AND MONETARY DAMAGES - 8

LA190005PLEADITEPIEA

0157

MERRICK, HOFSTEDT & LINDSEY, P.S.
ATTORNEYS AT LAW
710 NINTH AVENUE
SEATTLE, WASHINGTON 98104
(206) 682-0610

1 **SEVENTH AFFIRMATIVE DEFENSE**

2 To the extent WNG had no economic or insurable interest in the properties allegedly
3 damaged during the policy period, coverage would not be afforded under the Westport policy.

4 **EIGHTH AFFIRMATIVE DEFENSE**

5 To the extent the loss described in the complaint was caused by an excluded peril, coverage
6 would be precluded under the Westport policy.

7 **NINTH AFFIRMATIVE DEFENSE**

8 To the extent the complaint describes a loss to property excluded under the Westport policy,
9 coverage would be precluded.

10 **TENTH AFFIRMATIVE DEFENSE**

11 To the extent the loss described in the complaint was caused and/or resulted from the
12 ordinary business conduct and operating conduct of plaintiff, coverage would be precluded under the
13 Westport policy.

14 **ELEVENTH AFFIRMATIVE DEFENSE**

15 To the extent the loss described in the complaint was caused or made worse by rust,
16 corrosion, wear and tear or gradual deterioration, coverage would be precluded under the Westport
17 policy.

18 **TWELFTH AFFIRMATIVE DEFENSE**

19 To the extent WNG failed to give immediate written notice to Westport and submit a signed,
20 sworn proof of loss within sixty (60) days after the loss, coverage would be precluded under the
21 Westport policy.

22 **THIRTEENTH AFFIRMATIVE DEFENSE**

23 To the extent WNG has not complied with all terms, conditions and requirements of the
24 Westport policy, the suit is barred and coverage is not afforded under the Westport policy.

25
26
ANSWER OF DEFENDANT WESTPORT INSURANCE
CORPORATION TO COMPLAINT FOR DECLARATORY RELIEF
AND MONETARY DAMAGES - 7

L:\1900005\PLEAD\TEPIEA

MERRICK, HOFSTEDT & LINDSEY, P.S.
ATTORNEYS AT LAW
710 NINTH AVENUE
SEATTLE, WASHINGTON 98104
(206) 682-0610

0156

1 **PRAYER FOR RELIEF**

2 10.1 - 10.4 The allegations of these paragraphs assert conclusions of law to which no
3 response is required. To the extent any response is required from Westport, Westport denies the
4 allegations contained in paragraphs 10.1 - 10.4
5

6 **FIRST AFFIRMATIVE DEFENSE**

7 The complaint fails to state facts sufficient to constitute a cause of action or to state a claim
8 against Westport upon which relief can be granted.

9 **SECOND AFFIRMATIVE DEFENSE**

10 The complaint is barred by the suit limitation provision set forth in the Westport policy
11 purchased by WNG.

12 **THIRD AFFIRMATIVE DEFENSE**

13 To the extent the loss described in the complaint is not a fortuitous loss, coverage would not
14 be afforded under the Westport policy.

15 **FOURTH AFFIRMATIVE DEFENSE**

16 To the extent the complaint seeks to recover for something other than a direct loss which took
17 place during the policy period, coverage would not be afforded under the Westport policy.

18 **FIFTH AFFIRMATIVE DEFENSE**

19 To the extent there was no physical loss or damage to the insured property during the policy
20 period, coverage would not be afforded under the Westport policy.

21 **SIXTH AFFIRMATIVE DEFENSE**

22 To the extent WNG did not have an insurable interest in the property at the time the property
23 was damaged, coverage would not be afforded under the Westport policy.
24
25
26

ANSWER OF DEFENDANT WESTPORT INSURANCE
CORPORATION TO COMPLAINT FOR DECLARATORY RELIEF
AND MONETARY DAMAGES - 6

L:\190\005\PLEAD\TEPIEA

MERRICK, HOFSTEDT & LINDSEY, P.S.
ATTORNEYS AT LAW
710 NINTH AVENUE
SEATTLE, WASHINGTON 98104
(206) 682-0610

0155

AltinoEPA 000165

1 7.2 Denied. Westport denies the allegations of paragraph 7.2 as they relate to Westport.
2 Westport is without sufficient knowledge or information to form a belief as to the remaining
3 allegations of paragraph 7.2 and therefore denies same.
4

5 7.3 Denied. Westport denies the allegations of paragraph 7.3 as they relate to Westport.
6 Westport is without sufficient knowledge or information to form a belief as to the truth of the
7 remaining allegations contained in paragraph 7.3 and therefore denies same.
8

9 7.4 Denied. Westport denies the allegations of paragraph 7.4 as they relate to Westport.
10 Westport is without sufficient knowledge or information to form a belief as to the truth of the
11 remaining allegations contained in paragraph 7.4 and therefore denies same.
12

THIRD CLAIM: BREACH OF CONTRACT AGAINST CGL INSURER DEFENDANTS

13 8.1 Westport incorporates paragraphs 1.1 through 7.4 of this answer by reference as
14 though fully set forth herein.
15

16 8.2 - 8.4 The allegations contained in these paragraphs are inapplicable to Westport,
17 and therefore require no response. To the extent any response is required from Westport, Westport
18 denies the allegations contained in paragraphs 8.2 - 8.4.
19

**FOURTH CLAIM: BREACH OF CONTRACT
AGAINST PROPERTY INSURER DEFENDANTS**

20 9.1 Westport incorporates paragraphs 1.1 through 8.4 of this answer by reference as
21 though fully set forth herein.
22

23 9.2 - 9.4 Denied. Westport denies the allegations of paragraphs 9.2 - 9.4 as they relate to
24 Westport. Westport is without sufficient knowledge or information to form a belief as to the truth of
25 the remaining allegations contained in paragraphs 9.2 - 9.4 and therefore denies same.
26

ANSWER OF DEFENDANT WESTPORT INSURANCE
CORPORATION TO COMPLAINT FOR DECLARATORY RELIEF
AND MONETARY DAMAGES - 5

L:\190\005\PLEAD\TEPIEA

MERRICK, HOFSTEDT & LINDSEY, P S
ATTORNEYS AT LAW
710 NINTH AVENUE
SEATTLE, WASHINGTON 98104
(206) 682-0610

0154

AltinoEPA 000166

1 4.2 Admitted in part and denied in part. Westport admits only that it issued policy
2 number FI 50 09 52 to WNG during the July 31, 1979 through July 31, 1982 policy period, and that
3 Westport is in the business of selling insurance. The policy Westport issued is subject to the terms
4 and provisions of the individual policy issued. Westport is without sufficient knowledge or
5 information to form a belief as to the truth of the remaining allegations of paragraph 4.2 and
6 therefore denies same.

7
8 **UNDERLYING LIABILITIES**

9 5.1 - 5.4 Denied. Westport is without sufficient knowledge or information to form a belief
10 as to the truth of the allegations of paragraphs 5.1 - 5.4 and therefore denies same.

11 5.5 Denied. Westport denies the allegations of paragraph 5.5 as they relate to Westport.
12 Westport is without sufficient knowledge or information to form a belief as to the remaining
13 allegations of paragraph 5.5 and therefore denies same.

14
15 **FIRST CLAIM: DECLARATORY JUDGMENT**
16 **AGAINST THE CGL INSURER DEFENDANTS**

17 6.1 - 6.5 The allegations contained in these paragraphs are inapplicable to Westport,
18 and therefore require no response. To the extent any response is required from Westport, Westport is
19 without sufficient knowledge or information to form a belief as to the remaining allegations of
20 paragraph 6.1 - 6.5 and therefore denies same.

21 **SECOND CLAIM: DECLARATORY JUDGMENT**
22 **AGAINST PROPERTY INSURER DEFENDANTS ONLY**

23 7.1 Westport incorporates paragraphs 1.1 through 6.5 of this answer by reference as
24 though fully set forth herein.

25
26
ANSWER OF DEFENDANT WESTPORT INSURANCE
CORPORATION TO COMPLAINT FOR DECLARATORY RELIEF
AND MONETARY DAMAGES - 4

L \190\005\PLEAD\ITEPIEA

MERRICK, HOFSTEDT & LINDSEY, P.S.
ATTORNEYS AT LAW
710 NINTH AVENUE
SEATTLE, WASHINGTON 98104
(206) 582-0610

0153

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18

THE PARTIES

2.1 Denied. Westport is without sufficient knowledge or information to form a belief as to the truth of the allegations contained in paragraph 2.1 and therefore denies same.

2.2 Admitted in part and denied in part. Westport admits only that it issued policy number FI 50 09 52 to Washington Natural Gas ("WNG") during the July 31, 1979 to July 31, 1982 policy period. Westport is without sufficient knowledge or information to form a belief as to the truth of the remaining allegations of paragraph 2.2 and therefore denies same.

2.3 Denied. Westport is without sufficient knowledge or information to form a belief as to the truth of the allegations contained in paragraph 2.3 and therefore denies same.

2.4 Admitted in part and denied in part. Westport admits only that it issued policy number FI 50 09 52 to WNG during the July 31, 1979 to July 31, 1982 policy period, and that its state of incorporation and principle place of business are accurately reflected on Exhibit B to the Complaint. Westport is without sufficient knowledge or information to form a belief as to the truth of the remaining allegations of paragraph 2.4 and therefore denies same.

2.5 Denied. Westport is without sufficient knowledge or information to form a belief as to the truth of the allegations contained in this paragraph and therefore denies same.

19
20
21
22

JURISDICTION AND VENUE

3.1 - 3.3 The allegations in paragraphs 3.1 - 3.3 are narrative and state legal conclusions, and no response is required from Westport. To the extent any response is required from Westport, Westport denies the allegations contained in paragraphs 3.1 - 3.3.

23
24
25
26

THE INSURANCE POLICIES AT ISSUE

4.1 Denied. Westport is without sufficient knowledge or information to form a belief as to the truth of the allegations contained in paragraph 4.1 and therefore denies same.

ANSWER OF DEFENDANT WESTPORT INSURANCE
CORPORATION TO COMPLAINT FOR DECLARATORY RELIEF
AND MONETARY DAMAGES - 3

MERRICK, HOFSTEDT & LINDSEY, P.S.
ATTORNEYS AT LAW
710 NINTH AVENUE
SEATTLE, WASHINGTON 98104
(206) 682-0610

1 REPUBLIC INSURANCE COMPANY;
2 PACIFIC EMPLOYERS INSURANCE
3 COMPANY; PACIFIC MUTUAL MARINE
4 OFFICE, INC.; RELIANCE FIRE AND
5 ACCIDENT INSURANCE CORPORATION;
6 RIVER THAMES INSURANCE COMPANY,
7 LIMITED; THE SEVEN PROVINCES
8 INSURANCE COMPANY, LIMITED; SPHERE
9 INSURANCE COMPANY, LIMITED; SWISS
10 NATIONAL INSURANCE COMPANY,
11 LIMITED; SWISS UNION GENERAL
12 INSURANCE COMPANY; THE TRAVELERS
13 INDEMNITY COMPANY; THE TRAVELERS
14 PROPERTY CASUALTY CORP. AS
15 SUCCESSOR-IN-INTEREST TO AETNA
CASUALTY AND SURETY CO.;
UNDERWRITERS AT LLOYD'S, LONDON;
UNITED STANDARD INSURANCE
COMPANY, LIMITED; UNITED STATES
FIRE INSURANCE COMPANY; VANGUARD
INSURANCE COMPANY, LIMITED;
WESTPORT INSURANCE CORP. AS
SUCCESSOR-IN-INTEREST TO
MANHATTAN FIRE AND MARINE
INSURANCE COMPANY; WORLD
AUXILIARY INSURANCE CORPORATION,
LIMITED; AND ZURICH AMERICAN
INSURANCE COMPANY OF ILLINOIS,

Defendants.

Defendant, Westport Insurance Corporation (as successor-in-interest to Manhattan Fire and Marine Insurance Company) (hereinafter "Westport"), by its attorneys, hereby answers the Complaint for Declaratory Relief and Money Damages filed by Puget Sound Energy, Inc. ("PSE") as follows:

INTRODUCTION

1.1 The allegations in paragraph 1.1 are narrative and no response from Westport is required. To the extent any response is required from Westport, Westport denies the allegations contained in paragraph 1.1.

ANSWER OF DEFENDANT WESTPORT INSURANCE
CORPORATION TO COMPLAINT FOR DECLARATORY RELIEF
AND MONETARY DAMAGES - 2

L:\1900005\PLEAD\TEP1EA

MERRICK, HOFSTEDT & LINDSEY, P S
ATTORNEYS AT LAW
710 NINTH AVENUE
SEATTLE, WASHINGTON 98104
(206) 882-0610

0151

AltinoEPA 000169

FILED

98 APR 28 PM 4: 15

KING COUNTY
SUPERIOR COURT CLERK
SEATTLE, WA.

Honorable William L. Downing

IN THE SUPERIOR COURT OF WASHINGTON FOR KING COUNTY

PUGET SOUND ENERGY, INC.,

Plaintiff,

v.

NO. 97-2-29050-3 SEA

**ANSWER OF DEFENDANT
WESTPORT INSURANCE
CORPORATION TO COMPLAINT
FOR DECLARATORY RELIEF
AND MONETARY DAMAGES**

ALBA GENERAL INSURANCE COMPANY;
ANGLO-FRENCH INSURANCE COMPANY,
LIMITED; ANGLO-SAXON INSURANCE
ASSOCIATION, LIMITED; THE BALOISE
FIRE INSURANCE COMPANY, LIMITED;
BRITISH AVIATION INSURANCE
COMPANY, LIMITED; BRITISH NATIONAL
LIFE INSURANCE SOCIETY; CENTENNIAL
INSURANCE COMPANY; CENTURY
INDEMNITY AS SUCCESSOR-IN-INTEREST
TO INSURANCE COMPANY OF NORTH
AMERICA AND AS SUCCESSOR-IN-
INTEREST TO INDEMNITY INSURANCE
COMPANY OF NORTH AMERICA; CITY
GENERAL INSURANCE COMPANY;
CONTINENTAL CASUALTY COMPANY;
THE DOMINION INSURANCE COMPANY,
LIMITED; DRAKE INSURANCE COMPANY,
LIMITED; EDINBURGH INSURANCE
COMPANY, LIMITED; EMPLOYERS
INSURANCE COMPANY OF WAUSAU; THE
EXCESS INSURANCE COMPANY, LIMITED;
EXCESS INSURANCE COMPANY OF
AMERICA; FIDELIDADE INSURANCE
COMPANY OF LISBON; GIBBON (N.M.)
GROUP; THE HOME INSURANCE
COMPANY; IRON TRADES MUTUAL
INSURANCE COMPANY; LEXINGTON
INSURANCE COMPANY; LONDON AND
EDINBURGH INSURANCE COMPANY,
LIMITED; LONDON MARKET COMPANIES;
MINSTER INSURANCE COMPANY,
LIMITED; NATIONAL CASUALTY
COMPANY OF AMERICA; NORTH STAR
REINSURANCE COMPANY; OLD

ANSWER OF DEFENDANT WESTPORT INSURANCE
CORPORATION TO COMPLAINT FOR DECLARATORY RELIEF
AND MONETARY DAMAGES - I

L 11900051PLEADYTEPIEA

MERRICK, HOFSTEDT & LINDSEY, P.S.
ATTORNEYS AT LAW
710 NINTH AVENUE
SEATTLE, WASHINGTON 98104
(206) 882-0610

0150

ORIGINAL

AltinoEPA 000170

XII.

RESERVATION OF RIGHTS

London Underwriters specifically reserve the right to amend their answers and Affirmative Defenses and/or bring counterclaims and/or third-party actions as may be determined by further investigation and discovery.

XIII.

PRAYER FOR RELIEF

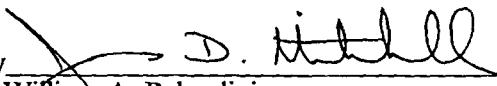
WHEREFORE, London Underwriters pray for the following:

1. That WNG's Complaint against London Underwriters be dismissed with prejudice.
2. That London Underwriters be awarded their attorney's fees and costs incurred in the defense of this action.
3. All further relief the Court may deem just and equitable.

DATED this 11th day of February, 1998.

LANE POWELL SPEARS LUBERSKY LLP

By


William A. Pelandini

WSBA No. 11521

James D. Mitchell

WSBA No. 22180

Attorneys for Defendants

ANSWER AND AFFIRMATIVE DEFENSES OF LONDON
UNDERWRITERS TO PLAINTIFF'S COMPLAINT - 12
SEATTLE:314802 v01

LANE POWELL SPEARS LUBERSKY LLP
1420 FIFTH AVENUE, SUITE 4100
SEATTLE, WASHINGTON 98101-2338
(206) 223-7000

0072

Twenty-Fifth Affirmative Defense

WNG's claims against London Underwriters are barred in whole or in part to the extent that the events or claims alleged in the Complaint have arisen from an event, act, occurrence, transaction, loss, or claim which was known to WNG and/or was in progress or was not contingent or unknown at or before the time of issuance of the policies of insurance issued by London Underwriters, recovery for which is precluded by applicable law and public policy.

Twenty-Sixth Affirmative Defense

All sums for which WNG has been or may be held liable, including those arising from claims for which it is entitled to coverage under the Policies, must be allocated across all periods during which the acts, omissions, or events giving rise to such liability took place, including all uninsured and self-insured periods; WNG must bear its proportionate share of responsibility for such sums with respect to its uninsured and self-insured periods; and any recovery to which WNG is entitled under the Policies must be reduced accordingly.

Twenty-Seventh Affirmative Defense

The claims asserted against WNG do not arise from or relate to bodily injury, personal injury and/or or property damage within the meaning of the Policies.

Twenty-Eighth Affirmative Defense

WNG's claims are barred because it has failed to make a claim for loss within the time required under the Policies.

Twenty-Ninth Affirmative Defense

WNG's Complaint fails to set out WNG's claims with sufficient particularity to permit London Underwriters to determine all applicable defenses. London Underwriters therefore expressly reserve their right to amend or supplement this Answer with additional affirmative defenses once such information is ascertained.

Nineteenth Affirmative Defense

Certain of WNG's claims are barred because they constitute obligations assumed or voluntary payments made by or on behalf of WNG without prior notice to and express written consent by London Underwriters.

Twentieth Affirmative Defense

WNG's claims are barred because the losses, injury and/or damage for which WNG seeks coverage were expected or intended and/or were not fortuitous and thus there has been no event, accident and/or occurrence under the subject Policies.

Twenty-First Affirmative Defense

WNG negligently or intentionally concealed, misrepresented, or failed to disclose facts which were material and which were known by WNG to be material to the risks allegedly underwritten by London Underwriters for the purpose of inducing London Underwriters to subscribe one or more of the Policies. As a result, the claims asserted by WNG are barred or any recovery by WNG must be reduced, and/or London Underwriters are entitled to rescind the alleged contracts of excess insurance with WNG and/or the Policies are void.

Twenty-Second Affirmative Defense

Certain of WNG's claims are in the nature of fines, penalties, punitive damages, and/or exemplary damages, and said claims are barred by the Policies, applicable law, and/or public policy.

Twenty-Third Affirmative Defense

To the extent WNG is entitled to any recovery under the Policies, such recovery must be reduced by amounts collected by WNG from any other insurer, person or other entity.

Twenty-Fourth Affirmative Defense

WNG has failed to fulfill its obligations of good faith and fair dealing, and its claims are barred or must be reduced accordingly, and/or London Underwriters are entitled to damages therefor.

ANSWER AND AFFIRMATIVE DEFENSES OF LONDON
UNDERWRITERS TO PLAINTIFF'S COMPLAINT - 10
SEATTLE:314802 v01

LANE POWELL SPEARS LUBERSKY LLP
1420 FIFTH AVENUE, SUITE 4100
SEATTLE, WASHINGTON 98101-2338
(206) 223-7000

0070

AltinoEPA 000173

Twelfth Affirmative Defense

Certain of the Policies subscribed by London Underwriters expressly or implicitly incorporate certain terms, conditions, exclusions, and other provisions of underlying or other insurance policies. London Underwriters are entitled to the benefit of and incorporate herein by reference, all such terms, conditions, exclusions and other provisions.

Thirteenth Affirmative Defense

WNG's claims under the Policies are barred or must be reduced under the terms of the "Other Insurance" provisions of the Policies.

Fourteenth Affirmative Defense

WNG's claims are barred because underlying insurance and self-insurance have not been exhausted.

Fifteenth Affirmative Defense

There is no coverage under the Policies until the said underlying insurers have paid or have been held liable to pay the full amount of their respective coverage limits and all self-insured retentions have been exhausted.

Sixteenth Affirmative Defense

WNG has not established the existence as well as terms and conditions of the certain of the excess insurance contracts allegedly issued by London Underwriters.

Seventeenth First Affirmative Defense

No action lies against London Underwriters until the amount of WNG's obligation to pay shall have been finally determined either by judgment against WNG after actual trial or by agreement of WNG, the claimant(s) and London Underwriters.

Eighteenth Affirmative Defense

Certain of WNG's claims set forth in the Complaint are barred because they constitute preventative or precautionary measures.

Fifth Affirmative Defense

2 There is no coverage for costs incurred by WNG with respect to the underlying claims which
3 do not constitute "damages" under Washington law.

Sixth Affirmative Defense

5 There is no coverage in respect of any liability for damage to property owned by or under
6 the care, custody or control of WNG.

Seventh Affirmative Defense

8 WNG's claims are barred under the terms, exclusions, conditions and/or limitations of
9 certain of the Policies which exclude coverage for damages, losses and/or liability resulting from,
10 inter alia, the release, discharge, dispersal, escape, or the like of toxic chemicals, pollutants,
11 contaminants, waste materials, or any other hazardous substances,

Eighth Affirmative Defense

13 WNG's claims against London Underwriters are barred in whole or in part to the extent
14 WNG has failed to comply with all terms and conditions set forth in the Policies, including, but not
15 limited to, and without prejudice to the generality of the foregoing, provision of timely notice to
16 London Underwriters of accidents, occurrences and/or claims and cooperation with London
17 Underwriters regarding said accidents, occurrences, and/or claims.

Ninth Affirmative Defense

19 The claims asserted in the Complaint are barred by the applicable statutes of limitation.

Tenth Affirmative Defense

21 There is no coverage under the Policies for occurrences, events and/or property damage
22 which took place, in whole or in part, outside the periods of coverage afforded by the Policies.

Eleventh Affirmative Defense

24 WNG has failed to mitigate damages for which coverage is sought, and any recovery from
25 London Underwriters must be reduced accordingly.

26
ANSWER AND AFFIRMATIVE DEFENSES OF LONDON
UNDERWRITERS TO PLAINTIFF'S COMPLAINT - 8
SEATTLE:314802 v01

LANE POWELL SPEARS LUBERSKY LLP
1420 FIFTH AVENUE, SUITE 4100
SEATTLE, WASHINGTON 98101-2338
(206) 223-7000

0068

IX.

**FOURTH CLAIM: BREACH OF CONTRACT
AGAINST PROPERTY INSURER DEFENDANTS**

9.1-9.4 Paragraphs 9.1 through 9.4 are not addressed to London Underwriters and therefore no answer on behalf of London Underwriters is required.

X.

PRAYER FOR RELIEF

10.1-10.4 London Underwriters deny that plaintiff is entitled to its prayer for relief.

10.5 London Underwriters deny any and all other allegations not specifically admitted above.

XI.

AFFIRMATIVE DEFENSES

As affirmative defenses to WNG's Complaint, London Underwriters, without conceding that they have the burden of proof as to any affirmative defense, allege as follows:

First Affirmative Defense

The Complaint fails to state a claim upon which relief can be granted.

Second Affirmative Defense

London Underwriters do not have a duty to defend.

Third Affirmative Defense

The claims asserted in the Complaint against London Underwriters do not set forth facts showing the existence of a justiciable controversy, are not ripe for adjudication, and seek an advisory opinion.

Fourth Affirmative Defense

The claims asserted in the Complaint against London Underwriters are barred in whole or in part by the doctrines of, unclean hands, laches, waiver and/or estoppel.

ANSWER AND AFFIRMATIVE DEFENSES OF LONDON
UNDERWRITERS TO PLAINTIFF'S COMPLAINT - 7
SEATTLE:314802 v01

LANE POWELL SPEARS LUBERSKY LLP
1420 FIFTH AVENUE, SUITE 4100
SEATTLE, WASHINGTON 98101-2338
(206) 223-7000

0007

AltinoEPA 000176

6.3 Answering paragraph 6.3, London Underwriters admit that the terms and conditions of the subject policies, when read in their entirety, speak for themselves. Except as so admitted, London Underwriters deny each and every remaining allegation set forth in paragraph 6.3 and specifically deny they had or have any duty to defend or to pay defense costs under the subject policies.

6.4 Answering paragraph 6.4, London Underwriters have not been presented with facts sufficient to establish a valid claim under the Policies. London Underwriters admit that they have not, at this time, agreed to provide coverage for some or all of WNG's alleged environmental liabilities. In addition, London Underwriters admit that, at this time, they dispute whether they are obligated to pay sums WNG becomes obligated to pay on account of environmental liabilities. Except as so admitted, London Underwriters deny each and every remaining allegation set forth in paragraph 6.4.

6.5 Answering paragraph 6.5, London Underwriters deny that an actual controversy of a justiciable nature exists between WNG and all London Underwriters as to all sites listed in paragraph 5.1.

VII.

**SECOND CLAIM: DECLARATORY JUDGMENT
AGAINST PROPERTY INSURER DEFENDANTS ONLY**

7.1-7.4 Paragraphs 7.1 through 7.4 are not addressed to London Underwriters and therefore no answer on behalf of London Underwriters is required.

VIII.

**THIRD CLAIM: BREACH OF CONTRACT AGAINST
CGL INSURER DEFENDANTS**

8.1 Answering paragraph 8.1, London Underwriters reallege and incorporate by this reference their responses to the allegations of paragraphs 1.1 through 6.5 above.

8.2 Answering paragraphs 8.2 through 8.4, London Underwriters deny the allegations therein.

V.

UNDERLYING LIABILITIES

5.1 Answering paragraph 5.1, London Underwriters lack knowledge or information sufficient to form a belief concerning the allegations set forth therein and therefore deny the same.

5.2 Answering paragraph 5.2, London Underwriters lack knowledge or information sufficient to form a belief concerning the allegations set forth therein and therefore deny the same.

5.3 Answering paragraph 5.3 of the Plaintiff's Complaint, London Underwriters lack knowledge or information sufficient to form a belief concerning the allegations set forth therein and therefore deny the same.

5.4 Answering paragraph 5.4, London Underwriters lack knowledge or information sufficient to form a belief concerning the allegations set forth therein and therefore deny the same.

5.5 Answering paragraph 5.5, London Underwriters deny that WNG has provided timely notice with respect to one or more of the sites listed in paragraph 5.1 of the Complaint, including specifically the Quendall Terminals Site. London Underwriters further deny that all conditions precedent to recovery under the subject policies have been satisfied or discharged by operation of law. London Underwriters lack knowledge or information sufficient to form a belief concerning the remaining allegations in paragraph 5.5 and therefore deny the same.

VI.

FIRST CLAIM:
DECLARATORY JUDGMENT AGAINST THE CGL INSURER DEFENDANTS

6.1 Answering paragraph 6.1, London Underwriters reallege and incorporate by this reference their responses to paragraphs 1.1 through 5.5 above.

6.2 Answering paragraph 6.2, London Underwriters admit that the terms and conditions of the subject policies, when read in their entirety, speak for themselves. Except as so admitted, London Underwriters deny each and every remaining allegation set forth in paragraph 6.2.

1 United States District Courts. London Underwriters lack knowledge or information sufficient to
2 form a belief concerning the remaining allegations in paragraph 2.5 and therefore deny the same.

3 **III.**

4 **JURISDICTION AND VENUE**

5 3.1 Answering paragraph 3.1, London Underwriters admit only that RCW §§ 2.08.010
6 and 7.24.010 speak for themselves. London Underwriters lack knowledge or information sufficient
7 to form a belief concerning the remaining allegations set forth in paragraph 3.1 and therefore deny
8 the same.

9 3.2 Answering paragraph 3.2, London Underwriters lack knowledge or information
10 sufficient to form a belief concerning the allegations set forth therein and therefore deny the same.

11 3.3 Answering paragraph 3.3, London Underwriters admit only that RCW 4.12.025
12 speaks for itself. London Underwriters lack knowledge or information sufficient to form a belief
13 concerning the remaining allegations in paragraph 3.3 and therefore deny the same.

14 **IV.**

15 **THE INSURANCE POLICIES AT ISSUE**

16 4.1 Answering paragraph 4.1, London Underwriters admit only that at certain times
17 herein, one or more of them, each for himself or itself alone and not for the others, in consideration
18 of premiums to be paid by or on behalf of WG&E, WNG and/or SGC, subscribed certain excess
19 liability insurance policies in favor of WG&E, WNG and/or SGC and that the terms and conditions
20 of those policies, when read in their entirety, speak for themselves. London Underwriters lack
21 knowledge or information sufficient to form a belief concerning the remaining allegations in
22 paragraph 4.1 and therefore deny the same.

23 4.2 Answering paragraph 4.2, London Underwriters lack knowledge or information
24 sufficient to form a belief concerning the allegations set forth therein and therefore deny the same.

and by way of answer and affirmative defenses to Puget Sound Energy, Inc.'s Complaint for Declaratory Relief and Money Damages, admit, deny, and allege as follows:

I.

INTRODUCTION

1.1 Answering paragraph 1.1 of the Plaintiff's Complaint, London Underwriters state that the allegations in the Plaintiff's Complaint for declaratory relief and money damages speak for themselves.

II.

THE PARTIES

2.1 Answering paragraph 2.1, London Underwriters lack knowledge or information sufficient to form a belief concerning the allegations set forth therein and therefore deny the same.

2.2 Answering paragraph 2.2, London Underwriters admit that, at certain relevant times herein, one or more of them each for himself or itself alone and not for the others, have been engaged in the business of insurance and subscribed certain excess liability insurance policies in favor of WG&E, WNG, and/or SGC. Except as so admitted, London Underwriters deny all remaining allegations.

2.3 Answering paragraph 2.3, London Underwriters admit that certain of the entities listed on Exhibit A to the Plaintiff's Complaint are foreign surplus lines insurers that subscribed certain excess liability insurance policies in favor of WG&E, WNG and/or SGC. Except as so admitted, London Underwriters lack knowledge or information sufficient to form a belief concerning the remaining allegations set forth in paragraph 2.3 and therefore deny the same.

2.4 Answering paragraph 2.4, London Underwriters lack knowledge or information sufficient to form a belief concerning the allegations set forth therein and therefore deny the same.

2.5 Answering paragraph 2.5, London Underwriters admit that certain of the London Market Companies identified therein are in insolvency or runoff proceedings in London, England, or elsewhere and are protected from suit on claims in the United States by injunctions entered by the

1 COMPANY; IRON TRADES MUTUAL)
2 INSURANCE COMPANY; LEXINGTON)
3 INSURANCE COMPANY; LONDON AND)
4 EDINBURGH INSURANCE COMPANY,)
5 LIMITED; LONDON MARKET COMPANIES;)
6 MINSTER INSURANCE COMPANY,)
7 LIMITED; NATIONAL CASUALTY)
8 COMPANY; NATIONAL CASUALTY)
9 COMPANY; NATIONAL CASUALTY)
10 COMPANY OF AMERICA; NORTH STAR)
11 REINSURANCE COMPANY; OLD)
12 REPUBLIC INSURANCE COMPANY;)
13 PACIFIC EMPLOYERS INSURANCE)
14 COMPANY; PACIFIC MUTUAL MARINE)
15 OFFICE, INC.; RELIANCE FIRE AND)
16 ACCIDENT INSURANCE CORPORATION;)
17 RIVER THAMES INSURANCE COMPANY,)
18 LIMITED; THE SEVEN PROVINCES)
19 INSURANCE COMPANY, LIMITED;)
20 SPHERE INSURANCE COMPANY,)
21 LIMITED; SWISS NATIONAL INSURANCE)
22 COMPANY, LIMITED; SWISS UNION)
23 GENERAL INSURANCE COMPANY; THE)
24 TRAVELERS INDEMNITY COMPANY; THE)
25 TRAVELERS PROPERTY CASUALTY)
26 CORP. AS SUCCESSOR-IN-INTEREST TO)
AETNA CASUALTY AND SURETY CO.;)
UNDERWRITERS AT LLOYD'S, LONDON;)
UNITED STANDARD INSURANCE)
COMPANY, LIMITED; UNITED STATES)
FIRE INSURANCE COMPANY; VANGUARD)
INSURANCE COMPANY, LIMITED;)
WESTPORT INSURANCE CORP. AS)
SUCCESSOR-IN-INTEREST TO)
MANHATTAN FIRE AND MARINE)
INSURANCE COMPANY; WORLD)
AUXILIARY INSURANCE CORPORATION,)
LIMITED; AND ZURICH AMERICAN)
INSURANCE COMPANY OF ILLINOIS,)

Defendants.

COME NOW defendants Underwriters Lloyd's, London, and all solvent London Market Insurance Companies subscribing policies issued in favor of Washington Gas & Electric Company ("WG&E"), Washington Natural Gas Company ("WNG"), and/or Seattle Gas Company ("SGC") (hereinafter "London Underwriters"), by and through their attorneys, Lane Powell Spears Lubersky,

ANSWER AND AFFIRMATIVE DEFENSES OF LONDON
UNDERWRITERS TO PLAINTIFF'S COMPLAINT - 2
SEATTLE:314802 v01

LANE POWELL SPEARS LUBERSKY LLP
1420 FIFTH AVENUE, SUITE 4100
SEATTLE, WASHINGTON 98101-2338
(206) 223-7000

0002

AltinoEPA 000181

FILED
98 FEB 12 PM 12:32
CLERK

SUPERIOR COURT OF THE STATE OF WASHINGTON
FOR KING COUNTY

PUGET SOUND ENERGY, INC.,)

Plaintiff,)

v.)

ALBA GENERAL INSURANCE COMPANY;)
ANGLO-FRENCH INSURANCE COMPANY,)
LIMITED; ANGLO-SAXON INSURANCE)
ASSOCIATION, LIMITED; THE BALOISE)
FIRE INSURANCE COMPANY, LIMITED;)
BRITISH AVIATION INSURANCE)
COMPANY, LIMITED; BRITISH NATIONAL)
LIFE INSURANCE SOCIETY; CENTENNIAL)
INSURANCE COMPANY; CENTURY)
INDEMNITY AS SUCCESSOR-IN-INTEREST)
TO INSURANCE COMPANY OF NORTH)
AMERICA AND AS SUCCESSOR-IN-)
INTEREST TO INDEMNITY INSURANCE)
COMPANY OF NORTH AMERICA; CITY)
GENERAL INSURANCE COMPANY;)
CONTINENTAL CASUALTY COMPANY;)
THE DOMINION INSURANCE COMPANY,)
LIMITED; DRAKE INSURANCE COMPANY,)
LIMITED; EDINBURGH INSURANCE)
COMPANY, LIMITED; EMPLOYERS)
INSURANCE COMPANY OF WAUSAU; THE)
EXCESS INSURANCE COMPANY,)
LIMITED; EXCESS INSURANCE COMPANY)
OF AMERICA; FIDELIDADE INSURANCE)
COMPANY OF LISBON; GIBBON (N.M.))
GROUP; THE HOME INSURANCE)

No. 97-2-29050-3SEA

ANSWER AND AFFIRMATIVE
DEFENSES OF LONDON
UNDERWRITERS TO PLAINTIFF'S
COMPLAINT FOR DECLARATORY
RELIEF AND MONEY DAMAGES

ANSWER AND AFFIRMATIVE DEFENSES OF LONDON
UNDERWRITERS TO PLAINTIFF'S COMPLAINT - 1
SEATTLE:314802 v01

LANE POWELL SPEARS LUBERSKY LLP
1420 FIFTH AVENUE, SUITE 4100
SEATTLE, WASHINGTON 98101-2338
(206) 223-7000

ORIGINAL

0061

1 Of Counsel:

2 James F. Martin

3 **Skadden, Arps, Slate, Meagher**

4 **& Flom (Illinois)**

5 333 West Wacker Drive

6 Suite 2100

7 Chicago, Illinois 60606

8 (312) 407-0700

9 FAClients\4859\8\PLDGS\TDA5

10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
Page 18 - DEFENDANT NORTH STAR REINSURANCE CORPORATION'S ANSWER AND AFFIRMATIVE
DEFENSES TO PLAINTIFF'S COMPLAINT FOR DECLARATORY RELIEF AND MONEY
DAMAGES

1 State of Washington may apply to all or part of the issues encompassed by this action.

2 WHEREFORE, having fully answered all of the allegations contained in the
3 Complaint, Defendant North Star Reinsurance Corporation requests judgment as follows:

4 For a declaration that pursuant to the terms, conditions, limits, provisions and
5 exclusions of the North Star Contract, North Star is not obligated to defend or indemnify
6 Plaintiff for any costs, expenses or liabilities relating to the underlying claims described in
7 the Complaint; and
8

9 For an order and judgment:

- 10 (a) granting judgment in favor of North Star and against Plaintiff;
11 (b) awarding North Star such costs, reasonable attorneys' fees and
12 expenses incurred herein and as may be allowed by law; and
13 (c) awarding North Star such further relief as this Court deems just
14 and proper.
15

16 DATED this 30th day of January, 1998.

17 BULLIVANT HOUSER BAILEY
18 A Professional Corporation

19
20 By 

21 THOMAS D. ADAMS
22 WSBA NO. 18470
23 Attorneys for Defendant
24 North Star Reinsurance Corporation
25
26

17 - DEFENDANT NORTH STAR REINSURANCE CORPORATION'S ANSWER AND AFFIRMATIVE
Page DEFENSES TO PLAINTIFF'S COMPLAINT FOR DECLARATORY RELIEF AND MONEY
DAMAGES

1 Contract, Plaintiff's claims against North Star are barred.

2 **FORTY-THIRD AFFIRMATIVE DEFENSE**

3 Plaintiff's claims are barred in whole or in part to the extent that Plaintiff
4 seeks to recover for routine business expenses, because the North Star Contract does not
5 cover such expenses.
6

7 **FORTY-FOURTH AFFIRMATIVE DEFENSE**

8 Plaintiff's claims are barred, in whole or in part, to the extent that Plaintiff
9 seeks recovery for losses that were in progress at the inception of the North Star Contract.
10

11 **FORTY-FIFTH AFFIRMATIVE DEFENSE**

12 Plaintiff's claims are barred, in whole or in part, to the extent coverage is
13 sought for any liability assumed by the insured in a contract or agreement.

14 **FORTY-SIXTH AFFIRMATIVE DEFENSE**

15 To the extent that the North Star Contract provides coverage for the
16 underlying claims which is denied, the extent of such coverage must be limited by applicable
17 principles of allocation.
18

19 **FORTY-SEVENTH AFFIRMATIVE DEFENSE**

20 North Star reserves its right to assert further defenses which may be
21 appropriate upon discovery of other matters concerning which discovery has been or will be
22 directed with respect to the claims set forth in the Complaint.

23 **FORTY-EIGHTH AFFIRMATIVE DEFENSE**

24 North Star reserves the right to assert that a substantive law other than the law of the
25
26

16 - DEFENDANT NORTH STAR REINSURANCE CORPORATION'S ANSWER AND AFFIRMATIVE
Page DEFENSES TO PLAINTIFF'S COMPLAINT FOR DECLARATORY RELIEF AND MONEY
DAMAGES

1 contribution.

2 **THIRTY-NINTH AFFIRMATIVE DEFENSE**

3 The named insured is required by the terms and conditions of the North Star
4 Contract to maintain in full force and effect underlying insurance coverage. To the extent
5 there has been a failure to do so, North Star may be relieved of its obligations, if any, under
6 the North Star Contract.
7

8 **FORTIETH AFFIRMATIVE DEFENSE**

9 North Star denies that it is liable to Plaintiff under the North Star Contract. In
10 the event North Star is deemed liable to Plaintiff, then North Star may be entitled to
11 contribution, indemnification, apportionment or other relief from all other defendants and
12 from any other entities that may be subject to joinder in this action for liabilities and duties
13 arising out of insurance policies issued to Plaintiff, and any liability North Star may owe
14 should be limited or reduced by such contribution, indemnification, apportionment or other
15 relief.
16

17 **FORTY-FIRST AFFIRMATIVE DEFENSE**

18 The claims of Plaintiff are barred, in whole or in part, to the extent the North
19 Star Contract was not assigned or transferred to Plaintiff in accordance with the requirements
20 stated or incorporated in the North Star Contract.
21

22 **FORTY-SECOND AFFIRMATIVE DEFENSE**

23 To the extent North Star has settled, compromised, or paid any of the
24 underlying claims or liabilities for which Plaintiff seeks coverage under the North Star
25
26

15 - DEFENDANT NORTH STAR REINSURANCE CORPORATION'S ANSWER AND AFFIRMATIVE
Page DEFENSES TO PLAINTIFF'S COMPLAINT FOR DECLARATORY RELIEF AND MONEY
DAMAGES

1 place outside that geographic region, no coverage is available under the North Star Contract.

2 **THIRTY-THIRD AFFIRMATIVE DEFENSE**

3 To the extent Plaintiff has failed to establish the existence, terms, conditions or
4 other provisions of the North Star Contract, North Star is under no obligation to provide
5 insurance coverage for underlying claims.
6

7 **THIRTY-FOURTH AFFIRMATIVE DEFENSE**

8 To the extent the North Star Contract does not provide coverage for damages
9 to premises alienated, coverage for any claims is barred in whole or in part to the extent
10 those claims seek coverage for such damage.
11

12 **THIRTY-FIFTH AFFIRMATIVE DEFENSE**

13 Plaintiff's Complaint is barred in whole or in part because Plaintiff has failed
14 to join other parties which are necessary for the just adjudication of this action.
15

16 **THIRTY-SIXTH AFFIRMATIVE DEFENSE**

17 To the extent the North Star Contract was cancelled for nonpayment of
18 premiums, no coverage is available under the North Star Contract.
19

20 **THIRTY-SEVENTH AFFIRMATIVE DEFENSE**

21 Plaintiff's claims are or may be barred by the doctrines of res judicata,
22 collateral estoppel, judicial estoppel and/or issue preclusion.
23

24 **THIRTY-EIGHTH AFFIRMATIVE DEFENSE**

25 North Star's coverage obligations, if any, are subject to any "other insurance"
26 clause contained or incorporated in the North Star Contract and by established principles of

14 - DEFENDANT NORTH STAR REINSURANCE CORPORATION'S ANSWER AND AFFIRMATIVE
Page DEFENSES TO PLAINTIFF'S COMPLAINT FOR DECLARATORY RELIEF AND MONEY
DAMAGES

1 claims asserted in the Complaint are barred.

2 **TWENTY-EIGHTH AFFIRMATIVE DEFENSE**

3 To the extent the North Star Contract excludes coverage for personal injury or
4 property damage arising out of a nuclear incident, coverage for any claims is barred to the
5 extent those claims seek coverage for such personal injury or property damage.
6

7 **TWENTY-NINTH AFFIRMATIVE DEFENSE**

8 To the extent the North Star Contract does not provide coverage for damage to
9 property owned by the named insured, coverage for any claims is barred in whole or in part
10 to the extent those claims seek coverage for such damage.
11

12 **THIRTIETH AFFIRMATIVE DEFENSE**

13 To the extent Plaintiff asserts that the alleged North Star Contract provides
14 coverage for the underlying claims described in the Complaint, there has been a lack of
15 consideration for the obligations claimed and circumstances sued upon; therefore, North Star
16 has no obligation to Plaintiff under the terms of the North Star Contract.
17

18 **THIRTY-FIRST AFFIRMATIVE DEFENSE**

19 The imposition of liability upon North Star, outside the scope of coverage
20 afforded by the North Star Contract, for the losses occasioned by releases of hazardous waste
21 into the environment would result in unjust enrichment to Plaintiff.
22

23 **THIRTY-SECOND AFFIRMATIVE DEFENSE**

24 To the extent the North Star Contract limits coverage to a particular
25 geographic region and the underlying claims relate to alleged property damage that took
26

13 - DEFENDANT NORTH STAR REINSURANCE CORPORATION'S ANSWER AND AFFIRMATIVE
Page DEFENSES TO PLAINTIFF'S COMPLAINT FOR DECLARATORY RELIEF AND MONEY
DAMAGES

1 **TWENTY-SECOND AFFIRMATIVE DEFENSE**

2 To the extent that the relief sought in the underlying claims constitute punitive
3 damages, no coverage is afforded for such relief under the North Star Contract.

4 **TWENTY-THIRD AFFIRMATIVE DEFENSE**

5 The North Star Contract affords coverage only to the named insured;
6 accordingly, the alleged North Star Contract provides no coverage to any person or entity
7 that is not included as a named insured under the North Star Contract.

8 **TWENTY-FOURTH AFFIRMATIVE DEFENSE**

9 To the extent that the relief sought in the underlying proceedings constitutes
10 fines, penalties or restitution, no coverage is afforded for such relief by the North Star
11 Contract.

12 **TWENTY-FIFTH AFFIRMATIVE DEFENSE**

13 North Star owes no duty to afford coverage to Plaintiff under the North Star
14 Contract where the underlying claims result from intentional acts of the insured.

15 **TWENTY-SIXTH AFFIRMATIVE DEFENSE**

16 To the extent that Plaintiff knew or should have known of the loss or risk of
17 loss at the time the North Star Contract was issued, the claims asserted in the Complaint are
18 barred.

19 **TWENTY-SEVENTH AFFIRMATIVE DEFENSE**

20 To the extent that Plaintiff acts or failures to act which gave rise to the
21 polluted conditions referenced in the Complaint were in violation of law or public policy, the

22
23
24
25
26
12 - DEFENDANT NORTH STAR REINSURANCE CORPORATION'S ANSWER AND AFFIRMATIVE
Page DEFENSES TO PLAINTIFF'S COMPLAINT FOR DECLARATORY RELIEF AND MONEY
DAMAGES

1 underlying proceedings took place during periods other than the periods of coverage provided
2 by the North Star Contract, such bodily injury or damage to property is not covered as a
3 matter of law.
4

5 **EIGHTEENTH AFFIRMATIVE DEFENSE**

6 To the extent that plaintiff may have voluntarily paid or assumed an obligation
7 to pay or incurred any expense in connection with the underlying claims without North Star's
8 consent or approval, there is no coverage under the North Star Contract for such payments
9 or assumed obligations.
10

11 **NINETEENTH AFFIRMATIVE DEFENSE**

12 To the extent that plaintiff failed to mitigate, minimize, or avoid any damages
13 it allegedly sustained, any recovery against North Star must be reduced accordingly.
14

15 **TWENTIETH AFFIRMATIVE DEFENSE**

16 To the extent that it is determined that the named insured, its agents or
17 representatives misrepresented, failed to disclose or omitted material information in
18 connection with any application for insurance in connection with the issuance or renewal of
19 the North Star Contract, coverage for any claims is barred.
20

21 **TWENTY-FIRST AFFIRMATIVE DEFENSE**

22 The North Star Contract requires exhaustion of the policies and/or self-insured
23 retentions underlying the alleged North Star Contract, and to the extent such underlying
24 limits and self-insured retentions have not been properly exhausted, North Star has no
25 obligation to indemnify plaintiff.
26

11 - DEFENDANT NORTH STAR REINSURANCE CORPORATION'S ANSWER AND AFFIRMATIVE
Page DEFENSES TO PLAINTIFF'S COMPLAINT FOR DECLARATORY RELIEF AND MONEY
DAMAGES

1 such obligation to so defend or to so indemnify Plaintiff.

2 **TWELFTH AFFIRMATIVE DEFENSE**

3 To the extent the relief sought in the underlying proceedings is equitable in
4 nature and does not constitute damages, it is not recoverable under the North Star Contract.
5

6 **THIRTEENTH AFFIRMATIVE DEFENSE**

7 To the extent the relief sought in the underlying proceedings does not
8 constitute covered property damage, bodily injury, or personal injury, North Star has no duty
9 to indemnify plaintiff.

10 **FOURTEENTH AFFIRMATIVE DEFENSE**

11 To the extent any bodily injury or damage to property alleged in the Complaint
12 was expected or intended, it is not recoverable under the North Star Contract.
13

14 **FIFTEENTH AFFIRMATIVE DEFENSE**

15 The North Star Contract does not provide coverage for claims asserted against
16 the named insured to the extent that those claims do not result from an occurrence(s) in
17 accordance with any definition of that term in or incorporated into the North Star Contract.
18

19 **SIXTEENTH AFFIRMATIVE DEFENSE**

20 To the extent any underlying or other contracts whose terms and conditions the
21 North Star Contract may incorporate in whole or in part contain a pollution exclusion, there
22 is no coverage for the underlying claims to the extent they fall within the pollution exclusion.
23

24 **SEVENTEENTH AFFIRMATIVE DEFENSE**

25 To the extent any bodily injury or damage to property alleged in the
26

10 - DEFENDANT NORTH STAR REINSURANCE CORPORATION'S ANSWER AND AFFIRMATIVE
Page DEFENSES TO PLAINTIFF'S COMPLAINT FOR DECLARATORY RELIEF AND MONEY
DAMAGES

such terms, conditions, exclusions and other provisions.

EIGHTH AFFIRMATIVE DEFENSE

To the extent there has been a failure to comply with the terms, conditions or other provisions contained in the North Star Contract and/or those of the underlying policy or policies to which the North Star Contract may follow form, the claims asserted in the Complaint are barred.

NINTH AFFIRMATIVE DEFENSE

To the extent there has been a failure to provide North Star with timely and proper notice of the alleged accidents or occurrences giving rise to the underlying proceedings, or a failure to give North Star timely and proper notice of any claim or suit, the claims asserted in the Complaint are barred.

TENTH AFFIRMATIVE DEFENSE

To the extent the North Star Contract requires as a condition precedent to coverage, that the named insured provide North Star an opportunity to associate, at North Star's discretion, in the defense of the underlying proceedings alleged in the Complaint, and the named insured has failed to provide North Star with such an opportunity North Star is relieved of any obligation or duty with respect to such underlying proceedings.

ELEVENTH AFFIRMATIVE DEFENSE

The North Star Contract does not contain an obligation to defend the named insured in any action or proceeding or to indemnify the named insured for defense costs in connection with such a defense without North Star's written consent, and North Star has no

9 - DEFENDANT NORTH STAR REINSURANCE CORPORATION'S ANSWER AND AFFIRMATIVE
DEFENSES TO PLAINTIFF'S COMPLAINT FOR DECLARATORY RELIEF AND MONEY
DAMAGES

1 **AFFIRMATIVE DEFENSES**

2 **FIRST AFFIRMATIVE DEFENSE**

3 The Complaint fails to state a claim upon which relief can be granted.

4 **SECOND AFFIRMATIVE DEFENSE**

5 The claims asserted in the Complaint are barred by the applicable statutes of
6 limitations.

7 **THIRD AFFIRMATIVE DEFENSE**

8 The claims asserted in the Complaint are barred by laches.

9 **FOURTH AFFIRMATIVE DEFENSE**

10 The claims asserted in the Complaint are barred by waiver.

11 **FIFTH AFFIRMATIVE DEFENSE**

12 The claims asserted in the Complaint are barred by estoppel.

13 **SIXTH AFFIRMATIVE DEFENSE**

14 There is no actual case or controversy between Plaintiff and North Star to the
15 extent Plaintiff has not alleged or properly demonstrated that Plaintiff's liability with respect
16 to the underlying claims referenced in the Complaint have exhausted or will exhaust the
17 coverage underlying the North Star Contract.

18 **SEVENTH AFFIRMATIVE DEFENSE**

19 To the extent the North Star Contract expressly or implicitly incorporates
20 certain terms, conditions, exclusions, and other provisions of underlying or other insurance
21 policies, North Star is entitled to the benefit of, and incorporates herein by reference, all
22

23
24
25
26
Page 8 - DEFENDANT NORTH STAR REINSURANCE CORPORATION'S ANSWER AND AFFIRMATIVE
DEFENSES TO PLAINTIFF'S COMPLAINT FOR DECLARATORY RELIEF AND MONEY
DAMAGES

1 through 7.4 of the Complaint as if fully set forth herein.

2 8.2 To the extent the allegations of Paragraph 8.2 state conclusions of law,
3 no response is required. To the extent those allegations refer to North Star and a response is
4 required, North Star denies those allegations. To the extent those allegations refer to entities
5 other than North Star, North Star states that it is without knowledge or information sufficient
6 to form a belief as to the truth or falsity of those allegations.
7

8 8.3 To the extent the allegations of Paragraph 8.3 are narrative or state
9 conclusions of law, no response is required. To the extent those allegations refer to North
10 Star and a response is required, North Star denies those allegations. To the extent those
11 allegations refer to entities other than North Star, North Star states that it is without
12 knowledge or information sufficient to form a belief as to the truth or falsity of those
13 allegations.
14

15 8.4 To the extent the allegations of Paragraph 8.4 state conclusions of law,
16 no response is required. To the extent those allegations refer to North Star and a response is
17 required, North Star denies those allegations. To the extent those allegations refer to entities
18 other than North Star, North Star states that it is without knowledge or information sufficient
19 to form a belief as to the truth or falsity of those allegations.
20

21 IX. FOURTH CLAIM

22 9.1-9.4 The allegations set forth under Section IX of the Complaint are
23 directed at defendants other than North Star and North Star is not required to and does not
24 respond to those allegations.
25
26

7 - DEFENDANT NORTH STAR REINSURANCE CORPORATION'S ANSWER AND AFFIRMATIVE
Page DEFENSES TO PLAINTIFF'S COMPLAINT FOR DECLARATORY RELIEF AND MONEY
DAMAGES

1 refer to North Star and a response is required, North Star denies those allegations. To the
2 extent those allegations refer to entities other than North Star, North Star states that it is
3 without knowledge or information sufficient to form a belief as to the truth or falsity of those
4 allegations.
5

6 6.4 To the extent the allegations of Paragraph 6.4 of the Complaint are
7 narrative or state conclusions of law, no response is required. To the extent those allegations
8 refer to North Star and a response is required, North Star denies those allegations. To the
9 extent those allegations refer to entities other than North Star, North Star states that it is
10 without knowledge or information sufficient to form a belief as to the truth or falsity of those
11 allegations.
12

13 6.5 To the extent the allegations of Paragraph 6.5 of the Complaint are
14 narrative or state conclusions of law, no response is required. To the extent a response is
15 required, North Star states that it is without knowledge or information sufficient to form a
16 belief as to the truth or falsity of those allegations.
17

18 **VII. SECOND CLAIM: DECLARATORY JUDGMENT**
19 **AGAINST PROPERTY INSURER**
20 **DEFENDANTS ONLY**

21 7.1-7.4 The allegations set forth under Section VII of the Complaint are
22 directed at defendants other than North Star, and North Star is not required to and does not
23 respond to those allegations.
24

25 **VIII. THIRD CLAIM: BREACH OF CONTRACT**
26 **AGAINST CGL INSURER DEFENDANTS**

8.1 North Star realleges and incorporates its answers to Paragraphs 1.1

6 - DEFENDANT NORTH STAR REINSURANCE CORPORATION'S ANSWER AND AFFIRMATIVE
Page DEFENSES TO PLAINTIFF'S COMPLAINT FOR DECLARATORY RELIEF AND MONEY
DAMAGES

1 narrative or state conclusions of law, no response is required. To the extent a response is
2 required, North Star states that it is without knowledge or information sufficient to form a
3 belief as to the truth or falsity of those allegations.

4
5 5.4 To the extent the allegations of Paragraph 5.4 of the Complaint are
6 narrative or state conclusions of law, no response is required. To the extent a response is
7 required, North Star states that it is without knowledge or information sufficient to form a
8 belief as to the truth or falsity of those allegations.

9
10 5.5 To the extent the allegations of Paragraph 5.5 of the Complaint are
11 narrative or state conclusions of law, no response is required. To the extent a response is
12 required, North Star denies those allegations.

13 **VI. FIRST CLAIM: DECLARATORY JUDGMENT**
14 **AGAINST THE CGL INSURER DEFENDANTS**

15 6.1 North Star realleges and incorporates its answers to Paragraphs 1.1
16 through 5.5 of the Complaint as if fully set forth herein.

17 6.2 To the extent the allegations of Paragraph 6.2 of the Complaint are
18 narrative or state conclusions of law, no response is required. To the extent those allegations
19 refer to North Star and a response is required, North Star denies those allegations. To the
20 extent those allegations refer to entities other than North Star, North Star states that it is
21 without knowledge or information sufficient to form a belief as to the truth or falsity of those
22 allegations.

23
24 6.3 To the extent the allegations of Paragraph 6.3 of the Complaint are
25 narrative or state conclusions of law, no response is required. To the extent those allegations
26

5 - DEFENDANT NORTH STAR REINSURANCE CORPORATION'S ANSWER AND AFFIRMATIVE
Page DEFENSES TO PLAINTIFF'S COMPLAINT FOR DECLARATORY RELIEF AND MONEY
DAMAGES

1 narrative or state conclusions of law, no response is required. To the extent those allegations
2 refer to North Star and a response is required, North Star admits only that it issued the North
3 Star Contract to Stone & Webster Management, that a Named Insured Endorsement lists
4 Washington Natural Gas Company as a named insured, and that the North Star Contract has
5 a policy period from June 1, 1971 through June 1, 1972. Further answering, North Star
6 states that the North Star Contract speaks for itself and that it is without knowledge or
7 information sufficient to form a belief as to the truth or falsity of the remaining allegations of
8 Paragraph 4.1 of the Complaint.
9

10 4.2 Because the allegations of Paragraph 4.2 of the Complaint are directed
11 at defendants other than North Star, North Star is not required to and does not respond to
12 those allegations.
13

14 V. UNDERLYING LIABILITIES

15 5.1 To the extent the allegations of Paragraph 5.1 of the Complaint are
16 narrative or state conclusions of law, no response is required. To the extent a response is
17 required, North Star states that it is without knowledge or information sufficient to form a
18 belief as to the truth or falsity of those allegations.
19

20 5.2 To the extent the allegations of Paragraph 5.2 of the Complaint are
21 narrative or state conclusions of law, no response is required. To the extent a response is
22 required, North Star states that it is without knowledge or information sufficient to form a
23 belief as to the truth or falsity of those allegations.
24

25 5.3 To the extent the allegations of Paragraph 5.3 of the Complaint are
26

4 - DEFENDANT NORTH STAR REINSURANCE CORPORATION'S ANSWER AND AFFIRMATIVE
Page DEFENSES TO PLAINTIFF'S COMPLAINT FOR DECLARATORY RELIEF AND MONEY
DAMAGES

1 at defendants other than North Star, North Star is not required to and does not respond to
2 those allegations.

3 2.5 To the extent the allegations of Paragraph 2.5 are narrative or state
4 conclusions of law, no response is required. To the extent a response is required, North Star
5 states that it is without knowledge or information sufficient to form a belief as to the truth or
6 falsity of those allegations.
7

8 III. JURISDICTION AND VENUE

9 3.1 To the extent the allegations of Paragraph 3.1 of the Complaint state
10 conclusions of law, no response is required. To the extent a response is required, North Star
11 states that it is without knowledge or information sufficient to form a belief as to the truth or
12 falsity of those allegations.
13

14 3.2 To the extent the allegations of Paragraph 3.2 of the Complaint state
15 conclusions of law, no response is required. To the extent a response is required, North Star
16 states that it is without knowledge or information sufficient to form a belief as to the truth or
17 falsity of those allegations.
18

19 3.3 To the extent the allegations of Paragraph 3.3 of the Complaint state
20 conclusions of law, no response is required. To the extent a response is required, North Star
21 states that it is without knowledge or information sufficient to form a belief as to the truth or
22 falsity of those allegations.

23 IV. THE INSURANCE POLICIES AT ISSUE

24 4.1 To the extent the allegations of Paragraph 4.1 of the Complaint are
25
26

3 - DEFENDANT NORTH STAR REINSURANCE CORPORATION'S ANSWER AND AFFIRMATIVE
Page DEFENSES TO PLAINTIFF'S COMPLAINT FOR DECLARATORY RELIEF AND MONEY
DAMAGES

II. THE PARTIES

2.1 To the extent the allegations of Paragraph 2.1 of the Complaint are narrative or state conclusions of law, no response is required. To the extent a response is required, North Star states that it is without knowledge or information sufficient to form a belief as to the truth or falsity of those allegations.

2.2 To the extent the allegations of Paragraph 2.2 of the Complaint are narrative or state conclusions of law, no response is required. To the extent those allegations refer to North Star and a response is required, North Star denies those allegations. To the extent those allegations refer to entities other than North Star, North Star states that it is without knowledge or information sufficient to form a belief as to the truth or falsity of those allegations.

2.3 To the extent the allegations of Paragraph 2.3 of the Complaint are narrative or state conclusions of law, no response is required. To the extent those allegations refer to North Star and a response is required, North Star admits only that it issued a certificate of excess liability insurance bearing No. NSX-9373 ("North Star Contract") to Stone & Webster Management, that a Named Insured Endorsement lists Washington Natural Gas Company as a named insured, and that the North Star Contract has a policy period from June 1, 1971 through June 1, 1972. To the extent those allegations refer to entities other than North Star, North Star states that it is without knowledge or information sufficient to form a belief as to the truth or falsity of those allegations.

2.4 Because the allegations of Paragraph 2.4 of the Complaint are directed

FILED Judge William L. Downing
97 JAN 20 PM 4:40

SEA
SUPERIOR COURT

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF KING

PUGET SOUND ENERGY, INC.,)	
)	NO. 97-2-29050-3 SEA
Plaintiff,)	
)	DEFENDANT NORTH STAR
v.)	REINSURANCE CORPORATION'S
)	ANSWER AND AFFIRMATIVE
ALBA GENERAL INSURANCE COMPANY;)	DEFENSES TO PLAINTIFF'S
et. al.,)	COMPLAINT FOR DECLARATORY
)	RELIEF AND MONEY DAMAGES
Defendants.)	

Defendant North Star Reinsurance Corporation ("North Star"), incorrectly
sued as North Star Reinsurance Company, for its answer to Plaintiff Puget Sound Energy,
Inc.'s ("Puget Sound") Complaint For Declaratory Relief And Money Damages
("Complaint"), states as follows:

I. INTRODUCTION

1.1 The allegations set forth in Paragraph 1.1 of the Complaint are
narrative and require no response.

0013

BULLIVANT HOUSER BAILEY
A Professional Corporation
1601 Fifth Avenue, Suite 2400
Seattle, Washington 98101-1618
Telephone (206) 292-8930

ORIGINAL

29

1 Centennial policy for the plaintiff's claims and no obligation to pay any of the amounts sought
2 by plaintiff;

3 3. Judgment for Centennial and dismissal of plaintiff's complaint with prejudice;

4 4. An award of Centennial's attorney fees and costs; and

5 5. Such other and further relief as this court may deem fair and reasonable.

6 DATED this 9th day of January 1998.

7 GAITÁN LENKER DAVIS & MYERS

8

9

By 

John E. Lenker, WSBA #13067

Attorneys for Defendant

Centennial Insurance Company

11 1183.01/P

12

13

14

15

16

17

18

19

20

21

22

23

24

25

26

8 - CENTENNIAL INSURANCE COMPANY'S
ANSWER AND AFFIRMATIVE DEFENSES

0042

LAW OFFICES OF
GAITÁN LENKER DAVIS & MYERS
A PROFESSIONAL LIMITED LIABILITY COMPANY
1420 FIFTH AVENUE, SUITE 3500
SEATTLE, WASHINGTON 98101-4033
(206) 346-6000

AltinoEPA 000201

1 is other insurance which was purchased to cover this type of loss or claim.

2 16. Plaintiff's claims against Centennial are barred, in whole or in part, because the
3 amounts incurred were not reasonable or necessary.

4 17. Plaintiff's claims against Centennial are barred, in whole or in part, because
5 plaintiff failed to avoid or mitigate damages.

6 18. Plaintiff's claims against Centennial are barred, in whole or in part, because
7 performance of the contract was excused.

8 19. Plaintiff's claims against Centennial are barred, in whole or in part, because of
9 collateral estoppel and/or *res judicata*.

10 20. Plaintiff's claims against Centennial are barred, in whole or in part, because
11 plaintiff failed to timely notify Centennial of the claims as required under Centennial policies,
12 which has prejudiced Centennial.

13 21. Plaintiff's claims against Centennial are barred, in whole or in part, because the
14 damages are not fortuitous and are known losses to plaintiff and, as such, are not covered under
15 the Centennial policy.

16 22. Plaintiff's claims against Centennial are barred, in whole or in part, because
17 plaintiff had actual knowledge of alleged or potential claims at the time it applied for the
18 Centennial insurance policy, plaintiff intentionally or unintentionally concealed knowledge of
19 these actual or potential claims and, in so doing, misrepresented and fraudulently or otherwise
20 induced Centennial to issue the Centennial policy at issue in this litigation.

21 23. Centennial expressly reserves the right to assert other affirmative defenses or
22 issues as they become apparent in the course of this litigation.

23 **III. PRAYER FOR RELIEF**

24 ACCORDINGLY, Centennial Insurance Company prays for the following relief:

- 25 1. That plaintiff take nothing by its complaint;
26 2. That the court enter a declaratory judgment finding no coverage under the

7 - **CENTENNIAL INSURANCE COMPANY'S
ANSWER AND AFFIRMATIVE DEFENSES**

LAW OFFICES OF
GAITÁN LENKER DAVIS & MYERS
A PROFESSIONAL LIMITED LIABILITY COMPANY
1420 FIFTH AVENUE, SUITE 3500
SEATTLE, WASHINGTON 98101-4033
(206) 346-6000

1 may be granted.

2 2. Plaintiff has not provided sufficient process or sufficient service of process.

3 3. The court lacks jurisdiction over both the subject matter and over the parties.

4 4. Plaintiff has failed to join a necessary party or parties.

5 5. Plaintiff's claims against Centennial are barred, in whole or in part, by the
6 equitable doctrine of waiver.

7 6. Plaintiff's claims against Centennial are barred, in whole or in part, by the
8 equitable doctrine of estoppel.

9 7. Plaintiff's claims against Centennial are barred, in whole or in part, by the
10 equitable doctrine of laches.

11 8. Plaintiff's claims against Centennial are barred, in whole or in part, because of the
12 statute of limitations imposed by the policy and/or law.

13 9. Plaintiff is not an insured under the Centennial policy.

14 10. Plaintiff's claims against Centennial are barred, in whole or in part, to the extent
15 plaintiff or its predecessor failed to comply with any condition or requirement in the Centennial
16 policy, including but not limited to notice and proof of loss.

17 11. Plaintiff's claims against Centennial are barred, in whole or in part, because
18 plaintiff and/or the insured did not have an insurable interest in the subject property during the
19 time the Centennial policy was in effect.

20 12. Plaintiff's claims against Centennial are barred, in whole or in part, because the
21 claims do not relate to covered property under the Centennial policy.

22 13. Plaintiff's claims against Centennial are barred, in whole or in part, because the
23 claims do not relate to covered perils.

24 14. Plaintiff's claims against Centennial are barred, in whole or in part, because of
25 terms, exclusions, and conditions in the Centennial policy.

26 15. Plaintiff's claims against Centennial are barred, in whole or in part, because there

6 - CENTENNIAL INSURANCE COMPANY'S
ANSWER AND AFFIRMATIVE DEFENSES

LAW OFFICES OF
GAI TÁN LENKER DAVIS & MYERS
A PROFESSIONAL LIMITED LIABILITY COMPANY
1420 FIFTH AVENUE, SUITE 3500
SEATTLE, WASHINGTON 98101-4033
(206) 346-6000

1 extent the allegations pertain to Centennial.

2 7.4 Centennial admits that a controversy exists between Centennial and plaintiff as to
3 whether there is coverage under the Centennial policy for plaintiff's claims. Centennial does not
4 have sufficient information to determine the truth or falsity of the remaining allegations of this
5 paragraph of plaintiff's complaint and therefore denies the same.

6 8.1 Centennial admits, denies, or alleges as set forth in paragraphs 1.1 through 7.4.

7 8.2 Centennial does not have sufficient information to determine the truth or falsity of
8 the allegations of this paragraph of plaintiff's complaint and therefore denies the same.

9 8.3 Centennial does not have sufficient information to determine the truth or falsity of
10 the allegations of this paragraph of plaintiff's complaint and therefore denies the same.

11 8.4 Centennial does not have sufficient information to determine the truth or falsity of
12 the allegations of this paragraph of plaintiff's complaint and therefore denies the same.

13 9.1 Centennial admits, denies, or alleges as set forth in paragraphs 1.1 through 8.4.

14 9.2 Centennial denies the allegations of this paragraph of plaintiff's complaint to the
15 extent the allegations pertain to Centennial.

16 9.3 Centennial denies the allegations of this paragraph of plaintiff's complaint to the
17 extent the allegations pertain to Centennial.

18 9.4 Centennial denies the allegations of this paragraph of plaintiff's complaint to the
19 extent the allegations pertain to Centennial.

20 10.1 Centennial denies plaintiff is entitled to the relief it seeks from Centennial.

21 10.2 Centennial denies plaintiff is entitled to the relief it seeks from Centennial.

22 10.3 Centennial denies plaintiff is entitled to the relief it seeks from Centennial.

23 10.4 Centennial denies plaintiff is entitled to the relief it seeks from Centennial.

24 **II. AFFIRMATIVE DEFENSES**

25 Centennial asserts the following affirmative defenses:

26 1. Plaintiff's complaint fails to state a claim against Centennial upon which relief

5 - **CENTENNIAL INSURANCE COMPANY'S
ANSWER AND AFFIRMATIVE DEFENSES**

LAW OFFICES OF
GAITÁN LENKER DAVIS & MYERS
A PROFESSIONAL LIMITED LIABILITY COMPANY
1420 FIFTH AVENUE, SUITE 3500
SEATTLE, WASHINGTON 98101-4033
(206) 346-6000

0039

AltinoEPA 000204

1 No. 245 11 57 27 for policy period July 31, 1979 to July 31, 1982. Centennial does not have
2 sufficient information to determine the truth or falsity of the remaining allegations of this
3 paragraph of plaintiff's complaint and therefore denies the same.

4 5.1 Centennial does not have sufficient information to determine the truth or falsity of
5 the allegations of this paragraph of plaintiff's complaint and therefore denies the same.

6 5.2 Centennial does not have sufficient information to determine the truth or falsity of
7 the allegations of this paragraph of plaintiff's complaint and therefore denies the same.

8 5.3 Centennial does not have sufficient information to determine the truth or falsity of
9 the allegations of this paragraph of plaintiff's complaint and therefore denies the same.

10 5.4 Centennial does not have sufficient information to determine the truth or falsity of
11 the allegations of this paragraph of plaintiff's complaint and therefore denies the same.

12 5.5 Centennial does not have sufficient information to determine the truth or falsity of
13 the allegations of this paragraph of plaintiff's complaint and therefore denies the same.

14 6.1 Centennial admits, denies or alleges as set forth in paragraphs 1.1 through 5.5.

15 6.2 Centennial does not have sufficient information to determine the truth or falsity of
16 the allegations of this paragraph of plaintiff's complaint and therefore denies the same.

17 6.3 Centennial does not have sufficient information to determine the truth or falsity of
18 the allegations of this paragraph of plaintiff's complaint and therefore denies the same.

19 6.4 Centennial does not have sufficient information to determine the truth or falsity of
20 the allegations of this paragraph of plaintiff's complaint and therefore denies the same.

21 6.5 Centennial does not have sufficient information to determine the truth or falsity of
22 the allegations of this paragraph of plaintiff's complaint and therefore denies the same.

23 7.1 Centennial admits, denies, or alleges as set forth in paragraphs 1.1 through 6.5.

24 7.2 Centennial denies the allegations of this paragraph of plaintiff's complaint to the
25 extent the allegations pertain to Centennial.

26 7.3 Centennial denies the allegations of this paragraph of plaintiff's complaint to the

4 - CENTENNIAL INSURANCE COMPANY'S
ANSWER AND AFFIRMATIVE DEFENSES

LAW OFFICES OF
GAITÁN LENKER DAVIS & MYERS
A PROFESSIONAL LIMITED LIABILITY COMPANY
1420 FIFTH AVENUE, SUITE 3500
SEATTLE, WASHINGTON 98101-4033
(206) 346-6000

0038

AltinoEPA 000205

1 of the remaining allegations of this paragraph of plaintiff's complaint and therefore denies the
2 same.

3 2.1 Centennial does not have sufficient information to determine the truth or falsity of
4 the allegations of this paragraph of plaintiff's complaint and therefore denies the same.

5 2.2 Centennial admits it is an insurance company and that it issued a property
6 insurance policy for the policy period of July 31, 1979 to July 31, 1982. Centennial does not
7 have sufficient information to determine the truth or falsity of the remaining allegations of this
8 paragraph of plaintiff's complaint and therefore denies the same.

9 2.3 Centennial does not have sufficient information to determine the truth or falsity of
10 the allegations of this paragraph of plaintiff's complaint and therefore denies the same.

11 2.4 Centennial admits that it is a corporation which was incorporated in New York
12 and which has its principal place of business in New York. Centennial admits that it issued
13 policy number 245 11 57 27 for policy period July 31, 1979, to July 31, 1982. Centennial does
14 not have sufficient information to determine the truth or falsity of the remaining allegations of
15 this paragraph of plaintiff's complaint and therefore denies the same.

16 2.5 Centennial does not have sufficient information to determine the truth or falsity of
17 the allegations of this paragraph of plaintiff's complaint and therefore denies the same.

18 3.1 Centennial does not have sufficient information to determine the truth or falsity of
19 the allegations of this paragraph of plaintiff's complaint and therefore denies the same.

20 3.2 Centennial does not have sufficient information to determine the truth or falsity of
21 the allegations of this paragraph of plaintiff's complaint and therefore denies the same.

22 3.3 Centennial does not have sufficient information to determine the truth or falsity of
23 the allegations of this paragraph of plaintiff's complaint and therefore denies the same.

24 4.1 Centennial does not have sufficient information to determine the truth or falsity of
25 the allegations of this paragraph of plaintiff's complaint and therefore denies the same.

26 4.2 Centennial admits that it sells insurance. Centennial admits that it issued Policy

3 - CENTENNIAL INSURANCE COMPANY'S
ANSWER AND AFFIRMATIVE DEFENSES

LAW OFFICES OF
GAI TÁN LENKER DAVIS & MYERS
A PROFESSIONAL LIMITED LIABILITY COMPANY
1420 FIFTH AVENUE, SUITE 3500
SEATTLE, WASHINGTON 98101-4033
(206) 346-6000

0037

AltinoEPA 000206

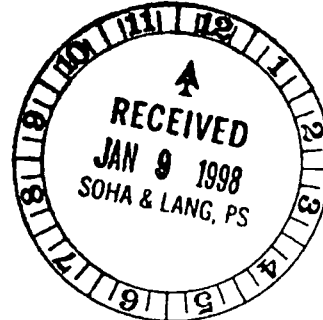
1 EDINBURGH INSURANCE COMPANY,
2 LIMITED; LONDON MARKET
3 COMPANIES; MINSTER INSURANCE
4 COMPANY, LIMITED; NATIONAL
5 CASUALTY COMPANY; NATIONAL
6 CASUALTY COMPANY OF AMERICA;
7 NORTH STAR REINSURANCE
8 COMPANY; OLD REPUBLIC
9 INSURANCE COMPANY; PACIFIC
10 EMPLOYERS INSURANCE COMPANY;
11 PACIFIC MUTUAL MARINE OFFICE,
12 INC.; RELIANCE FIRE AND
13 ACCIDENT INSURANCE
14 CORPORATION; RIVER THAMES
15 INSURANCE COMPANY, LIMITED;
16 THE SEVEN PROVINCES INSURANCE
17 COMPANY, LIMITED; SPHERE
18 INSURANCE COMPANY, LIMITED;
19 SWISS NATIONAL INSURANCE
20 COMPANY, LIMITED; SWISS UNION
21 GENERAL INSURANCE COMPANY;
THE TRAVELERS INDEMNITY
COMPANY; THE TRAVELERS
PROPERTY CASUALTY CORP. AS
SUCCESSOR-IN-INTEREST TO AETNA
CASUALTY AND SURETY CO.;
UNDERWRITERS AT LLOYD'S,
LONDON; UNITED STANDARD
INSURANCE COMPANY, LIMITED;
UNITED STATES FIRE INSURANCE
COMPANY; VANGUARD INSURANCE
COMPANY, LIMITED; WESTPORT
INSURANCE CORP. AS SUCCESSOR-
IN-INTEREST TO MANHATTAN FIRE
AND MARINE INSURANCE
COMPANY; WORLD AUXILIARY
INSURANCE CORPORATION,
LIMITED; AND ZURICH AMERICAN
INSURANCE COMPANY OF ILLINOIS,

Defendants.

RECEIVED

JAN 09 1998

GORDON MURRAY
TILDEN



22 COMES NOW defendant Centennial Insurance Company ("Centennial") and in answer
23 and by affirmative defense to plaintiff's complaint admits, denies, and alleges the following:

24 **I. ANSWER**

25 1.1 Centennial admits it has received a complaint for declaratory judgment and
26 money damages. Centennial does not have sufficient information to determine the truth or falsity

2 - CENTENNIAL INSURANCE COMPANY'S
ANSWER AND AFFIRMATIVE DEFENSES

LAW OFFICES OF
GAITÁN LENKER DAVIS & MYERS
A PROFESSIONAL LIMITED LIABILITY COMPANY
1420 FIFTH AVENUE, SUITE 3500
SEATTLE, WASHINGTON 98101-4033
(206) 346-6000

0036

The Honorable William L. Downing

FILED

93 JAN -9 PM 1:07

SUPERIOR COURT CLERK
SEATTLE, WASH.

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF KING

PUGET SOUND ENERGY, INC.,

Plaintiff,

v.

ALBA GENERAL INSURANCE
COMPANY; ANGLO-FRENCH
INSURANCE COMPANY, LIMITED;
ANGLO-SAXON INSURANCE
ASSOCIATION, LIMITED; THE
BALOISE FIRE INSURANCE
COMPANY, LIMITED; BRITISH
AVIATION INSURANCE COMPANY,
LIMITED; BRITISH NATIONAL LIFE
INSURANCE SOCIETY; CENTENNIAL
INSURANCE COMPANY; CENTURY
INDEMNITY AS SUCCESSOR-IN-
INTEREST TO INSURANCE
COMPANY OF NORTH AMERICA AND
AS SUCCESSOR-IN-INTEREST TO
INDEMNITY INSURANCE COMPANY
OF NORTH AMERICA; CITY
GENERAL INSURANCE COMPANY;
CONTINENTAL CASUALTY
COMPANY; THE DOMINION
INSURANCE COMPANY, LIMITED;
DRAKE INSURANCE COMPANY,
LIMITED; EDINBURGH INSURANCE
COMPANY, LIMITED; EMPLOYERS
INSURANCE COMPANY OF WAUSAU;
THE EXCESS INSURANCE COMPANY,
LIMITED; EXCESS INSURANCE
COMPANY OF AMERICA;
FIDELIDADE INSURANCE COMPANY
OF LISBON; GIBBON (N.M.) GROUP;
THE HOME INSURANCE COMPANY;
IRON TRADES MUTUAL INSURANCE
COMPANY; LEXINGTON INSURANCE
COMPANY; LONDON AND

NO. 97-2-29050-3SEA

**CENTENNIAL INSURANCE
COMPANY'S ANSWER AND
AFFIRMATIVE DEFENSES**

RECEIVED
GRAHAM & JAMES LLP/
RIDDELL WILLIAMS P.C.

AM JAN 9 1998 PM
7,8,9,10,11,12,1,2,3,4,5,6

COPY RECEIVED

JAN 09 1998

BULLIVANT, HOUSER, BAILEY
PENDERGRASS & HOFFMAN

GORDON & P.

SN-9

RECEIVED

JAN 9 1998

DERICK HCFSTEDT
& LINDSEY

1 - CENTENNIAL INSURANCE COMPANY'S
ANSWER AND AFFIRMATIVE DEFENSES

0035

ORIGINAL

LAW OFFICES OF
GAI TÁN LENKER DAVIS & MYERS
A PROFESSIONAL LIMITED LIABILITY COMPANY
1420 FIFTH AVENUE, SUITE 3500
SEATTLE, WASHINGTON 98101-4033
(206) 346-6000

AltinoEPA 000208

1
2
3
4
5
6
7
8
9
0
1
2
3
4
5
6
7
8
9
0
1
2
3
4
5
6
7
8

2
3
4

5
6
7

6
78
9

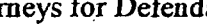
9

0
1

- 2
3
4
5
6
7

Q

2
3
4


Michael E. Ricketts, WSBA #9387
Attorneys for Defendant Old Republic Insurance
Company

1 **Third Affirmative Defense**

2 The claimed losses do not involve physical loss of or damage to property, and, therefore, no
3 first-party property coverage is afforded.
4

5 **Fourth Affirmative Defense**

6 The claimed losses do not involve damage to property covered under Old Republic's policy,
7 and, therefore, no first-party property coverage is afforded.
8

9 **Fifth Affirmative Defense**

10 The claimed losses to property owned by third-parties are not covered under Old Republic's
11 first-party property policy.
12

13 **Sixth Affirmative Defense**

14 To the extent the claimed losses were caused by a peril excluded under the Old Republic
15 policy, no first-party property coverage is afforded.
16

17 **Seventh Affirmative Defense**

18 The claimed losses did not occur during the period of Old Republic's first-party property
19 policy.
20

21 **Eighth Affirmative Defense**

22 Plaintiff failed to submit timely notice of claim to Old Republic, and, therefore, coverage
23 under Old Republic's policy is barred.
24

25 **Ninth Affirmative Defense**

26 Plaintiff failed to submit proof of loss for the claimed losses, and, therefore, coverage under
27 the Old Republic policy is barred.
28

X. PRAYER FOR RELIEF

10.1 The allegations in Paragraph 10.1 are narrative and conclusions to which no response is required. To the extent that a response is deemed required, Old Republic denies that Plaintiff is entitled to any affirmative relief.

10.2 The allegations in Paragraph 10.2 are narrative and conclusions, but Old Republic denies that Plaintiff is entitled to any money damages, pre-judgment interest, or post-judgment interest from Old Republic.

10.3 The allegations in Paragraph 10.3 are narrative and conclusions to which no response is required, but Old Republic denies that Plaintiff is entitled to attorneys fees or costs from Old Republic.

10.4 The allegation in Paragraph 10.4 are narrative and conclusions to which no response is required, but Old Republic denies that Plaintiff is entitled to any other relief against Old Republic.

AFFIRMATIVE DEFENSES

By way of further answer, and as affirmative defenses to each of the claims set forth in the Complaint, Old Republic alleges as follows:

First Affirmative Defense

Plaintiff's Complaint fails to state a cause of action upon which relief can be granted.

Second Affirmative Defense

The claimed losses were not caused by fortuitous events, and, therefore, no first-party property coverage is afforded.

1 7.3 Old Republic admits that it denied coverage with regard to two sites, Chehalis,
2 Washington and Everett, Washington, for which claim was made against Old Republic. Old
3 Republic denies each and every remaining allegation directed against it in Paragraph 7.3.
4

5 7.4 The allegations in Paragraph 7.4 are narrative and conclusions to which no response is
6 required. To the extent that a response is deemed required, Old Republic is without knowledge or
7 information sufficient to form a belief as to the truth of the allegations in Paragraph 7.4, and
8 therefore denies the same.
9

10 **VIII. THIRD CLAIM: BREACH OF CONTRACT AGAINST CGL**
11 **INSURER DEFENDANTS**

12 8.1-8.4 This cause of action is directed against the defendants that issued third-party
13 liability policies and not against Old Republic, which issued a first-party property policy.
14 Therefore, Old Republic does not and need not respond to the allegations in Paragraphs 8.1-8.4.
15 To the extent that a response is deemed required, Old Republic is without knowledge or
16 information sufficient to form a belief as to the truth of the allegations in Paragraphs 8.1-8.4, and
17 therefore denies the same.
18

19 **IX. FOURTH CLAIM: BREACH OF CONTRACT AGAINST PROPERTY**
20 **INSURER DEFENDANTS**

21 9.1 Old Republic repeats and realleges the averments of Paragraphs 1.1 through 8.4 as
22 though fully set forth here.

23 9.2 Defendant Old Republic denies each and every allegation directed against it in
24 Paragraph 9.2, including that Plaintiff had an insurable interest in the Everett, Chehalis, and A
25 Street sites when Old Republic's policy was in effect.
26

27 9.3 Old Republic denies each and every allegation directed against it in Paragraph 9.3.

28 9.4 Old Republic denies each and every allegation directed against it in Paragraph 9.4.

1 Republic is without knowledge or information sufficient to form a belief as to the truth of the
2 allegations in Paragraph 5.3, and therefore denies the same.

3
4 5.4 Old Republic is without knowledge or information sufficient to form a belief as to the
5 truth of the allegations of Paragraph 5.4 but denies any loss covered under its policy occurred
6 during the period in which the policy was in effect.

7
8 5.5 Old Republic denies that the notice provided by Plaintiff to it was timely under the Old
9 Republic policy.

10 **VI. FIRST CLAIM: DECLARATORY JUDGMENT AGAINST THE**
11 **CGL INSURER DEFENDANTS**

12 6.1-6.5 This cause of action is directed against the defendants that issued third-party
13 liability policies and not against Old Republic, which issued a first-party property policy.
14 Therefore, Old Republic does not and need not respond to the allegations in Paragraphs 6.1-6.5.
15 To the extent that a response is deemed required, Old Republic is without knowledge or
16 information sufficient to form a belief as to the truth of the allegations in Paragraphs 6.1-6.5, and
17 therefore denies the same.
18

19 **VII. SECOND CLAIM: DECLARATORY JUDGMENT AGAINST PROPERTY**
20 **INSURER DEFENDANTS ONLY**

21 7.1 Old Republic repeats and realleges the averments of Paragraphs 1.1 through 6.5 as
22 though fully set forth here.

23
24 7.2 Old Republic denies each and every allegation of Paragraph 7.2 with regard to the Old
25 Republic policy, including that Plaintiff had an insurable interest in the Everett, Chehalis, and A
26 Street sites when Old Republic's policy was in effect.
27
28

1 2.2 Old Republic admits the allegations in Paragraph 2.2 to the extent they are directed
2 against it.

3
4 2.3 The allegations in Paragraph 2.3 are not directed against Old Republic, and, therefore,
5 no response is provided or required. To the extent that a response is deemed required, Old
6 Republic is without knowledge or information sufficient to form a belief as to the truth of the
7 allegations in Paragraph 2.3, and therefore denies the same.

8
9 2.4 Old Republic admits that Exhibit B was attached to the Complaint and that it contained
10 various information about the defendant property insurance carriers. Old Republic admits that it is
11 incorporated in the State of Pennsylvania.

12
13 2.5 The allegations in Paragraph 2.5 are not directed against Old Republic, and therefore,
14 no response is provided or required. To the extent that a response is deemed required, Old
15 Republic is without knowledge or information sufficient to form a belief as to the truth of the
16 allegations in Paragraph 2.5, and therefore denies the same.

17 **III. JURISDICTION AND VENUE**

18
19 3.1 The allegations in Paragraph 3.1 are narrative and conclusions, and therefore, no
20 response is required. To the extent that a response is deemed required, Old Republic is without
21 knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph
22 3.1, and therefore denies the same.

23
24 3.2 The allegations in Paragraph 3.2 are narrative and conclusions, and therefore, no
25 response is required. To the extent that a response is deemed required, Old Republic is without
26 knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph
27 3.2, and therefore denies the same.
28

97 DEC 31 PM 2:08

SUP. COURT CLERK
SEATTLE, WA.

**IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF KING**

PUGET SOUND ENERGY, INC.,

Plaintiffs,

v.

**ALBA GENERAL INSURANCE
COMPANY, et al.,**

Defendants.

NO. 97-2-29050-3 SEA

**OLD REPUBLIC'S ANSWER TO
PLAINTIFF'S COMPLAINT**

COMES NOW Defendant Old Republic Insurance Company ("Old Republic"), by and through its attorneys undersigned, and for answer to Plaintiff Puget Sound Energy's Complaint for Declaratory Relief and Money Damages ("Complaint"), states as follows:

I. INTRODUCTION

1.1 The allegations in Paragraph 1.1, including subparagraphs (a) and (b), are narrative, and, therefore, no response is required. To the extent that a response is deemed required, Old Republic denies that Plaintiff is entitled to any affirmative relief.

II. THE PARTIES

2.1 Old Republic is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 2.1, and therefore denies the same.

**OLD REPUBLIC'S ANSWER TO
PLAINTIFF'S COMPLAINT - 1**

H:\CLIENTS\2007\PLEADING\0171.SAM

PEERY, HISCOCK, PIERSON, KINGMAN & PEABODY, P.S.
ATTORNEYS AT LAW

505 MADISON STREET, SUITE 300
SEATTLE, WA 98101

ORIGINAL

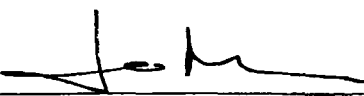
AltinoEPA' 00021

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32
33
34
35
36
37
38
39
40
41
42
43
44
45
46
47

10.4 **Other Relief.** For such further relief as the Court deems just and equitable.

DATED this 18th day of November, 1997.

GORDON MURRAY TILDEN

By 
Charles C. Gordon, WSBA #1773
James R. Murray, WSBA #25263
Jeffrey I. Tilden, WSBA #12219

**GRAHAM & JAMES LLP/RIDDELL
WILLIAMS P.S.**

David M. Brenner, WSBA #14278

Attorneys for Puget Sound Energy, Inc.

1 forced to pay its costs for the losses associated with the investigation and remedial work at
2 the Everett, Chehalis and A Street Sites.
3

4 **9.4 Additional Damages.** As another direct and proximate result of the breach of
5 these insurance contracts, WNG has been forced to incur attorneys' fees and other expenses
6 in order to prosecute this action.
7
8
9

10 **X. PRAYER FOR RELIEF**

11 AS A RESULT OF THE FOREGOING, WNG requests the following relief:
12

13 **10.1 Declaratory Judgment.** A declaratory judgment that each CGL Insurer
14 Defendant is obligated to pay in full on behalf of WNG such sums paid or which WNG
15 becomes legally obligated to pay as damages, including defense costs, with respect to the
16 Underlying Liabilities. This duty to pay is subject only to the limits of liability expressly and
17 unambiguously stated in the policies. A declaratory judgment that each Property Insurer
18 Defendant is obligated fully to reimburse and compensate WNG for all physical loss and
19 damage to the real and personal property owned by WNG or for which WNG is responsible
20 resulting from environmental contamination at the Everett, Chehalis and A Street Sites,
21 including expenses incurred in the removal of debris and expenses necessarily incurred for
22 the purpose of reducing losses, subject only to the limits of liability expressly and
23 unambiguously stated in the policies.
24
25
26
27
28
29
30
31
32
33
34
35

36 **10.2. Money Damages.** For money damages, in an amount to be proved at trial,
37 together with pre-judgment and post-judgment interest.
38
39

40 **10.3 Attorneys' Fees and Costs of Suit.** For reasonable attorneys' fees and costs
41 including, without limitation, actual attorneys' fees pursuant to Olympic Steamship Co. v.
42 Centennial Insurance Co., 117 Wn.2d 37, 811 P.2d 673 (1991).
43
44
45
46
47

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32
33
34
35
36
37
38
39
40
41
42
43
44
45
46
47

**VIII. THIRD CLAIM: BREACH OF CONTRACT AGAINST
CGL INSURER DEFENDANTS**

8.1 **Incorporation by Reference.** WNG realleges the allegations of paragraphs 1.1 through 7.4, above.

8.2 **Breach of Contract.** The CGL Insurer Defendants have breached the contracts of insurance at issue by refusing to perform their duties to pay with regard to the Underlying Liabilities, as specified above.

8.3 **Damages.** As a direct and proximate result of the breaches of these insurance contracts, WNG has been deprived of the benefits of its insurance coverage with respect to the Underlying Liabilities. WNG has, therefore, been forced to pay all costs and expenses of defending the Underlying Liabilities, and to pay damages (including clean-up costs) and settlement costs with respect to the Underlying Liabilities.

8.4 **Additional Damages.** As another direct and proximate result of the breach of these insurance contracts, WNG has been forced to incur attorneys' fees and other expenses in order to prosecute this action.

**IX. FOURTH CLAIM: BREACH OF CONTRACT
AGAINST PROPERTY INSURER DEFENDANTS**

9.1 **Incorporation by Reference.** WNG realleges the allegations of paragraphs 1.1 through 8.4, above.

9.2 **Breach of Contract.** Defendant Property Insurers have breached the contracts of insurance at issue by refusing to perform their duties to pay for property damage and related expenses at Everett, Chehalis and A Street Sites, as specified above.

9.3 **Damages.** As a direct and proximate result of the breaches of these insurance contracts, WNG has been deprived of the benefit of its insurance coverage with respect to the property damage at the Everett, Chehalis and A Street Sites. WNG has, therefore, been

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32
33
34
35
36
37
38
39
40
41
42
43
44
45
46
47

**VII. SECOND CLAIM: DECLARATORY JUDGMENT
AGAINST PROPERTY INSURER DEFENDANTS ONLY**

7.1 **Incorporation by Reference.** WNG realleges the allegations of paragraphs 1.1 through 6.5, above.

7.2 **Duty to Indemnify.** Physical loss and damage to property, in the form of environmental contamination, including expenses incurred in the removal of debris and expenses necessarily incurred for the purpose of reducing losses, occurred at the Everett, Chehalis and A Street Sites during the time period in which one or more of the All Risk Property Policies was in effect. Upon information and belief, all conditions precedent to coverage under the All Risk Property Policies are satisfied, waived or are otherwise inapplicable.

7.3 **Breach of Contract.** Upon information and belief, the Property Insurer Defendants dispute one or more of WNG's contentions set forth in the preceding paragraphs and have breached their duty to pay or reimburse WNG under the Property Policies.

7.4 **Actual Controversy.** An actual controversy of a justiciable nature presently exists between WNG and the Property Insurer Defendants with respect to these defendants' duties and obligations under the All Risk Property Policies in that WNG contends that the Property Insurer Defendants have a duty fully to reimburse and compensate WNG for all physical loss and damage to the real and personal property owned by WNG or for which WNG is responsible, including expenses incurred in the removal of debris and expenses necessarily incurred for the purpose of reducing losses, which loss and damage have occurred during the policy period set forth in the policies they sold to WNG. The issuance of declaratory relief will terminate the existing controversy between the parties.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32
33
34
35
36
37
38
39
40
41
42
43
44
45
46
47

**VI. FIRST CLAIM:
DECLARATORY JUDGMENT AGAINST THE CGL INSURER
DEFENDANTS**

6.1 **Incorporation by Reference.** WNG realleges the allegations of paragraphs 1.1 through 5.5, above.

6.2 **Duty to Indemnify.** Under the CGL policies at issue, each CGL Insurer Defendant undertook to pay on behalf of WNG all sums which WNG becomes obligated to pay as damages because of property damage occurring during the period of any policy. The duty to pay is subject only to limits of liability expressly and unambiguously stated in each of the policies.

6.3 **Duty to Defend.** Under the insurance policies at issue, CGL Insurer Defendants undertook the duty to defend WNG, or to pay its defense costs, against any suit or its equivalent seeking damages on account of covered property damage.

6.4 **Breach of Contract.** CGL Insurer Defendants have breached their duties to defend, or to pay defense costs, and to indemnify WNG. CGL Insurer Defendants have not agreed to provide coverage for some or all of the Environmental Liabilities against WNG. WNG is informed and believes, and on that basis alleges, that each defendant disputes that it is obligated to pay, subject only to policy limits, all costs of defense that WNG incurs and all sums WNG becomes obligated to pay through judgment, settlement or otherwise on account of these Environmental Liabilities.

6.5 **Actual Controversy.** An actual controversy of a justiciable nature presently exists between WNG and defendants concerning the proper construction of the policies and the rights and obligations of the parties thereto with respect to the Environmental Liabilities described in paragraphs 5.1(a) through (f). The issuance of declaratory relief by this Court will terminate the existing controversy between the parties.

1 Union (the "Gas Works Park Site"). Regular operation of the plant ceased in 1956
2 with the arrival of natural gas and WNG sold the property on which the plant was
3 located to the City of Seattle by a real estate contract dated September 4, 1962.
4

5 (f) A creosote facility operated by Republic Creosote in Renton,
6 Washington (the "Quendall Terminals Site"), to which WNG allegedly sold
7 byproducts from the manufactured gas process in connection with its operation of the
8 manufactured gas plant at the Gas Works Park Site.
9

10 5.2 **Damages.** WNG has incurred losses and expenses and will continue to incur
11 losses and expenses in connection with the Underlying Liabilities. These losses and
12 expenses include defense costs and money paid as damages, including clean-up costs and
13 debris removal costs.
14

15 5.3 **Occurrences or Accidents During Policy Periods.** WNG's actual and
16 potential liability for the Underlying Liabilities arises out of alleged occurrences or accidents
17 that took place during the policy periods of the referenced CGL Insurance Policies.
18

19 5.4 **Physical Loss During Policy Periods.** WNG has suffered physical loss and
20 damage to property at the sites which it owned or formerly owned in the form of
21 environmental contamination during the policy periods of the referenced All Risk Property
22 Policies of insurance.
23

24 5.5 **Notice.** WNG has provided timely notice to all defendants concerning the
25 Underlying Liabilities and all other conditions precedent to the recovery under the policies
26 have been satisfied or discharged by operation of law.
27
28
29
30
31
32
33
34
35
36
37
38
39
40
41
42
43
44
45
46
47

1 various times during the period from at least 1979 through 1985, Property Insurer
2 Defendants, in consideration of premiums paid by or on behalf of WNG, sold certain
3 property policies to WNG (hereinafter referred to as the "All Risk Property Policies"). A list
4 of the Property Insurer Defendants, the policy numbers, and the effective dates of said
5 policies is attached hereto as Exhibit B.
6
7
8
9

10 V. UNDERLYING LIABILITIES

11 5.1. WNG operated several manufactured gas plants throughout the State of
12 Washington. As a result of the gas manufacturing operations, WNG generated or produced
13 certain byproducts, including tar. WNG sold the byproducts to third parties or, in some
14 cases, used the byproducts in the course of gas manufacturing operations. WNG faces
15 liabilities for damages due to property damage allegedly incurred as a result of the
16 environmental conditions at the following sites ("Underlying Liabilities"):
17
18
19
20
21
22
23

24 (a) A manufactured gas plant in Chehalis, Washington operated and
25 owned by WNG from 1926 until at least 1941 (the "Chehalis Site").
26
27

28 (b) A manufactured gas plant in Everett, Washington operated and owned
29 by WNG from 1928 until at least 1941 (the "Everett Site").
30
31

32 (c) Property adjacent to A Street in Tacoma, where a manufactured gas
33 plant had been operated previously by others (the "A Street Site"). WNG acquired
34 the A Street Site in 1928. WNG sold the former manufactured gas plant site in
35 various parcels between 1945 and 1984.
36
37
38
39

40 (d) The Thea Foss Waterway adjacent to the A Street Site (the "Thea Foss
41 Site").
42
43

44 (e) A manufactured gas plant in Seattle, Washington operated by WNG at
45 a location now known as Gas Works Park, including alleged contamination of Lake
46
47

1 Helens Co. Ltd. They are accordingly not named as parties to this litigation, but WNG
2 reserves all rights and hereby states its intention to apply the findings of this litigation to its
3 claims with respect to these entities at the appropriate time.
4
5

6 7 **III. JURISDICTION AND VENUE**

8
9 3.1 **Subject Matter Jurisdiction.** This Court has jurisdiction pursuant to RCW
10 §§ 2.08.010 and 7.24.010.
11

12 3.2 **Personal Jurisdiction.** This Court has personal jurisdiction of all parties.
13

14 3.3 **Venue.** Venue in this Court is proper pursuant to RCW 4.12.025.
15
16

17 **IV. THE INSURANCE POLICIES AT ISSUE**

18
19 4.1 The CGL Insurer Defendants' policies provide primary, excess or umbrella
20 insurance. Many of the excess CGL Insurance policies incorporate the terms of one or more
21 underlying insurance policies. At various times during the period from at least 1943 through
22 1985, the CGL Insurer Defendants, in consideration of premiums paid by or on behalf of
23 WNG, sold certain general liability insurance policies to WNG ("CGL Insurance Policies").
24 A list of the CGL Insurance Policies, the policy numbers, and the effective dates of the
25 policies is attached hereto at Exhibit A. Some of the policies issued by CGL Insurer
26 Defendants were purchased by Washington Gas & Electric Company and Seattle Gas
27 Company respectively prior to the merger of those two entities. With respect to such
28 policies, WNG is seeking relief only for claims arising out of facilities operated by the
29 Company that purchased the policy. Also, WNG is not seeking relief in this complaint from
30 CGL Insurer Defendants with respect to claims previously released by WNG pursuant to
31 prior settlement agreements.
32
33
34
35
36
37
38
39
40
41
42
43

44 4.2 Each Property Insurer Defendant is and was at all times relevant hereto
45 engaged in the business of selling insurance to protect against damage to property. At
46
47

1 2.2 **Defendants.** Defendants are insurance companies (or their corporate
2 successors) or entities that, during all relevant time periods, engaged in the business of
3 selling (i) standard-form general liability insurance policies ("CGL Insurance") or (ii) "all
4 risk," or "difference-in-conditions" property insurance policies ("All Risk Property
5 Insurance").
6
7
8
9

10 2.3 Exhibit A, attached hereto and incorporated by reference herein, identifies the
11 names of defendants who sold CGL Insurance to WNG and, upon information and belief,
12 their places of incorporation and principal places of business. These defendants, including
13 relevant corporate predecessors or successors, will be referred to hereinafter as CGL Insurer
14 Defendants.
15
16
17
18
19

20 2.4 Exhibit B, attached hereto and incorporated by reference herein, identifies the
21 names of defendants who sold All Risk Property Insurance to WNG and, upon information
22 and belief, their places of incorporation and principal places of business. These defendants,
23 including relevant corporate predecessors or successors, will be referred to hereinafter as the
24 Property Insurer Defendants.
25
26
27
28
29

30 2.5 The following London Market Companies are in insolvency or runoff
31 proceedings in London, England and are protected from suit on claims in the United States
32 by injunctions entered by the United States District Courts: Andrew Weir Ins. Co. Ltd.;
33 Andrew Weir Ins. Co. Ltd. Marine A/C; British Commercial Ins. Co. Ltd.; British &
34 Overseas Co. Ltd.; Covenant Mutual Insurance Company; English & American Ins. Co. Ltd.;
35 English & American Ins. Co., Ltd. (Marine); Hull Underwriters Assoc.; London & Overseas
36 Ins. Co. Ltd.; Midland Insurance Company; Mutual Fire and Inland Insurance Company;
37 Orion Ins. Co. Ltd.; Orion Ins. Ltd. Marine A/C; Orion Ins. Co. Ltd. (Marine "T"); Orion Ins.
38 Co. Ltd. "T" Marine A/C; Orion Ins. Co. Ltd. "T" A/C; Pine Top Insurance Company; St.
39
40
41
42
43
44
45
46
47

1
2
3 Plaintiff Puget Sound Energy, Inc. ("PSE"), alleges as follows:
4

5 **I. INTRODUCTION**
6

7 1.1 This is an action for declaratory judgment and money damages, seeking:
8

9 (a) A declaration of the rights, duties and liabilities of the parties under
10 liability insurance policies and property insurance policies issued to PSE (as
11 successor-in-interest) by the defendants with respect to certain liabilities of PSE for
12 environmental damage; and
13
14
15

16 (b) Damages for breach of defendants' contractual duties under the
17 policies with respect to said liabilities.
18
19
20

21 **II. THE PARTIES**
22

23 2.1 **Plaintiff.** Puget Sound Energy, Inc. is a corporation organized under the laws
24 of the State of Washington and has its principal place of business in Bellevue, Washington.
25 It is an electric and gas utility. PSE is the corporate successor to Washington Natural Gas
26 Company through the merger of Puget Sound Power and Light Company and Washington
27 Natural Gas Company. By reason of that merger, PSE holds all the rights which Washington
28 Natural Gas Company held prior to the merger with respect to the insurance policies of
29 Washington Natural Gas Company as well as all of its potential and actual environmental
30 liabilities. Washington Natural Gas Company was previously known as Washington Gas &
31 Electric Company ("WG&E"). Washington Natural Gas Company was the corporate
32 successor to Seattle Gas Company ("Seattle Gas") through the merger of WG&E and Seattle
33 Gas in 1956. In this complaint, "WNG" shall hereinafter refer to Seattle Gas, WG&E,
34 Washington Natural Gas Company and PSE (in its capacity as successor to them).
35
36
37
38
39
40
41
42
43
44
45
46
47

1 THE HOME INSURANCE COMPANY; IRON
2 TRADES MUTUAL INSURANCE
3 COMPANY; LEXINGTON INSURANCE
4 COMPANY; LONDON AND EDINBURGH
5 INSURANCE COMPANY, LIMITED;
6 LONDON MARKET COMPANIES;
7 MINSTER INSURANCE COMPANY,
8 LIMITED; NATIONAL CASUALTY
9 COMPANY; NATIONAL CASUALTY
10 COMPANY OF AMERICA; NORTH STAR
11 REINSURANCE COMPANY; OLD
12 REPUBLIC INSURANCE COMPANY;
13 PACIFIC EMPLOYERS INSURANCE
14 COMPANY; PACIFIC MUTUAL MARINE
15 OFFICE, INC.; RELIANCE FIRE AND
16 ACCIDENT INSURANCE CORPORATION;
17 RIVER THAMES INSURANCE COMPANY,
18 LIMITED; THE SEVEN PROVINCES
19 INSURANCE COMPANY, LIMITED;
20 SPHERE INSURANCE COMPANY,
21 LIMITED; SWISS NATIONAL INSURANCE
22 COMPANY, LIMITED; SWISS UNION
23 GENERAL INSURANCE COMPANY; THE
24 TRAVELERS INDEMNITY COMPANY; THE
25 TRAVELERS PROPERTY CASUALTY
26 CORP. AS SUCCESSOR-IN-INTEREST TO
27 AETNA CASUALTY AND SURETY CO.;
28 UNDERWRITERS AT LLOYD'S, LONDON;
29 UNITED STANDARD INSURANCE
30 COMPANY, LIMITED; UNITED STATES
31 FIRE INSURANCE COMPANY;
32 VANGUARD INSURANCE COMPANY,
33 LIMITED; WESTPORT INSURANCE CORP.
34 AS SUCCESSOR-IN-INTEREST TO
35 MANHATTAN FIRE AND MARINE
36 INSURANCE COMPANY; WORLD
37 AUXILIARY INSURANCE CORPORATION,
38 LIMITED; AND ZURICH AMERICAN
39 INSURANCE COMPANY OF ILLINOIS,
40
41
42
43
44
45
46
47

Defendants.

FILED

27 NOV 13 PM 2:03

KING COUNTY
SUPERIOR COURT CLERK
SEATTLE, WA.

SUPERIOR COURT OF THE STATE OF WASHINGTON
FOR KING COUNTY

PUGET SOUND ENERGY, INC.,

Plaintiff,

v.

ALBA GENERAL INSURANCE COMPANY;
ANGLO-FRENCH INSURANCE COMPANY,
LIMITED; ANGLO-SAXON INSURANCE
ASSOCIATION, LIMITED; THE BALOISE
FIRE INSURANCE COMPANY, LIMITED;
BRITISH AVIATION INSURANCE
COMPANY, LIMITED; BRITISH NATIONAL
LIFE INSURANCE SOCIETY; CENTENNIAL
INSURANCE COMPANY; CENTURY
INDEMNITY AS SUCCESSOR-IN-
INTEREST TO INSURANCE COMPANY OF
NORTH AMERICA AND AS SUCCESSOR-
IN-INTEREST TO INDEMNITY
INSURANCE COMPANY OF NORTH
AMERICA; CITY GENERAL INSURANCE
COMPANY; CONTINENTAL CASUALTY
COMPANY; THE DOMINION INSURANCE
COMPANY, LIMITED; DRAKE
INSURANCE COMPANY, LIMITED;
EDINBURGH INSURANCE COMPANY,
LIMITED; EMPLOYERS INSURANCE
COMPANY OF WAUSAU; THE EXCESS
INSURANCE COMPANY, LIMITED;
EXCESS INSURANCE COMPANY OF
AMERICA; FIDELIDADE INSURANCE
COMPANY OF LISBON; GIBBON (N.M.)
GROUP;

97-2-29050-3SEA
No.

COMPLAINT FOR DECLARATORY
RELIEF AND MONEY DAMAGES

COMPLAINT FOR DECLARATORY RELIEF AND MONEY
DAMAGES - 1

0007

GORDON MURRAY TILDEN
1325 Fourth Avenue, Suite 1800
Seattle, Washington 98101
(206) 467-6477

AltinoEPA 000227

1 6. If you wish to seek the advice of an attorney in this matter, you should do so
2 promptly so that your written response, if any, may be served on time.
3

4 7. This summons is issued pursuant to Rule 4 of the Civil Rules for Superior
5 Court of the State of Washington.
6

7 DATED this 18th day of November 1997.
8
9

10
11
12 **GORDON MURRAY TILDEN**

13
14
15 By 

16 Charles C. Gordon, WSBA #1773

17 James R. Murray, WSBA #25263

18 Jeffrey I. Tilden, WSBA #12219
19
20

21
22 **GRAHAM & JAMES LLP/RIDDELL**
23 **WILLIAMS P.S.**

24 David M. Brenner, WSBA #14278
25
26

27
28 Attorneys for Puget Sound Energy, Inc.
29
30
31
32
33
34
35
36
37
38
39
40
41
42
43
44
45
46
47

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32
33
34
35
36
37
38
39
40
41
42
43
44
45
46
47

Vanguard Insurance Company, Limited; and
World Auxiliary Insurance corporation, Limited.

by and through their agent for service of process, Mendes & Mount.

AND TO: City General Insurance Company;
Drake Insurance Company, Limited;
Iron Trades Mutual Insurance Company;
Reliance Fire and Accident Insurance Corporation;
River Thames Insurance Company, Limited;
The Seven Provinces Insurance Company, Limited;
Sphere Insurance Company, Limited; and
United Standard Insurance Company, Limited;

by and through their agent for service of process, Toplis & Harding.

1. A lawsuit has been started against you in the above-entitled court by Plaintiff
Puget Sound Energy, Inc.

2. Plaintiff's claim is stated in the written complaint, a copy of which is served
upon you with this summons.

3. In order to defend against this lawsuit, you must respond to the complaint by
stating your defense in writing, and serve a copy upon the undersigned attorney within 40
days after the date of service on you of this summons, excluding the day of service, or a
default judgment may be entered against you without notice. A default judgment is one
where the plaintiff(s) may be entitled to what is asked for because you have not responded.

4. If you serve a notice of appearance on the undersigned attorney, you are
entitled to notice before a default judgment may be entered.

5. If not previously filed, you may demand that plaintiff(s) file this lawsuit with
the court. If you do so, your demand must be in writing and must be served upon the
undersigned attorney. Within 14 days after you serve your demand, the plaintiff(s) must file
this lawsuit with the court, or the service on you of this summons and complaint will be void.

1
2
3 TO: Continental Casualty Company;
4 Centennial Insurance Company;
5 Century Indemnity as successor-in-interest to Insurance Company of North
6 America and as successor-in-interest to Indemnity Insurance Company
7 of North America
8 Employers Insurance Company of Wausau;
9 The Home Insurance Company;
10 Lexington Insurance Company;
11 North Star Reinsurance Company;
12 Old Republic Insurance Company;
13 Pacific Employers Insurance Company;
14 Pacific Mutual Marine Office, Inc.;
15 The Travelers Indemnity Company;
16 The Travelers Property Casualty Corporation as successor-in-interest
17 to The Aetna Casualty & Surety Company;
18 United States Fire Insurance Company;
19 Westport Insurance Corp. as successor-in-interest to Manhattan Fire and
20 Marine Insurance Company; and
21 Zurich American Insurance Company of Illinois.
22

23
24 AND TO: Alba General Insurance Company;
25 Anglo-French Insurance Company, Limited;
26 Anglo-Saxon Insurance Association, Limited;
27 The Baloise Fire Insurance Company, Limited;
28 British Aviation Insurance Company, Limited;
29 British National Life Insurance Society;
30 The Dominion Insurance Company, Limited;
31 Edinburgh Insurance Company, Limited;
32 The Excess Insurance Company, Limited;
33 The Excess Insurance Company of America;
34 Fidelidade Insurance Company of Lisbon;
35 London and Edinburgh Insurance Company, Limited;
36 London Market Companies;
37 Minster Insurance Company, Limited;
38 National Casualty Company;
39 National Casualty Company of America;
40 Swiss National Insurance Company, Limited;
41 Swiss Union General Insurance Company;
42 Underwriters at Lloyd's, London;
43
44
45
46
47

SUMMONS - 3

0004

GORDON MURRAY TILDEN
1325 Fourth Avenue, Suite 1800
Seattle, Washington 98101
(206) 467-6477

1 THE HOME INSURANCE COMPANY; IRON
2 TRADES MUTUAL INSURANCE
3 COMPANY; LEXINGTON INSURANCE
4 COMPANY; LONDON AND EDINBURGH
5 INSURANCE COMPANY, LIMITED;
6 LONDON MARKET COMPANIES;
7 MINSTER INSURANCE COMPANY,
8 LIMITED; NATIONAL CASUALTY
9 COMPANY; NATIONAL CASUALTY
10 COMPANY OF AMERICA; NORTH STAR
11 REINSURANCE COMPANY; OLD
12 REPUBLIC INSURANCE COMPANY;
13 PACIFIC EMPLOYERS INSURANCE
14 COMPANY; PACIFIC MUTUAL MARINE
15 OFFICE, INC.; RELIANCE FIRE AND
16 ACCIDENT INSURANCE CORPORATION;
17 RIVER THAMES INSURANCE COMPANY,
18 LIMITED; THE SEVEN PROVINCES
19 INSURANCE COMPANY, LIMITED;
20 SPHERE INSURANCE COMPANY,
21 LIMITED; SWISS NATIONAL INSURANCE
22 COMPANY, LIMITED; SWISS UNION
23 GENERAL INSURANCE COMPANY; THE
24 TRAVELERS INDEMNITY COMPANY; THE
25 TRAVELERS PROPERTY CASUALTY
26 CORP. AS SUCCESSOR-IN-INTEREST TO
27 AETNA CASUALTY AND SURETY CO.;
28 UNDERWRITERS AT LLOYD'S, LONDON;
29 UNITED STANDARD INSURANCE
30 COMPANY, LIMITED; UNITED STATES
31 FIRE INSURANCE COMPANY;
32 VANGUARD INSURANCE COMPANY,
33 LIMITED; WESTPORT INSURANCE CORP.
34 AS SUCCESSOR-IN-INTEREST TO
35 MANHATTAN FIRE AND MARINE
36 INSURANCE COMPANY; WORLD
37 AUXILIARY INSURANCE CORPORATION,
38 LIMITED; AND ZURICH AMERICAN
39 INSURANCE COMPANY OF ILLINOIS,
40
41
42
43
44
45
46
47

Defendants.

SUMMONS - 2

0003

GORDON MURRAY TILDEN
1325 Fourth Avenue, Suite 1800
Seattle, Washington 98101
(206) 467-6477

FILED
97 NOV 18 PM 2:03
KING COUNTY
SUPERIOR COURT CLERK
SEATTLE, WA.
SUPERIOR COURT OF THE STATE OF WASHINGTON
FOR KING COUNTY

PUGET SOUND ENERGY, INC.,

Plaintiff,

v.

ALBA GENERAL INSURANCE COMPANY;
ANGLO-FRENCH INSURANCE COMPANY,
LIMITED; ANGLO-SAXON INSURANCE
ASSOCIATION, LIMITED; THE BALOISE
FIRE INSURANCE COMPANY, LIMITED;
BRITISH AVIATION INSURANCE
COMPANY, LIMITED; BRITISH NATIONAL
LIFE INSURANCE SOCIETY; CENTENNIAL
INSURANCE COMPANY; CENTURY
INDEMNITY AS SUCCESSOR-IN-
INTEREST TO INSURANCE COMPANY OF
NORTH AMERICA AND AS SUCCESSOR-
IN-INTEREST TO INDEMNITY
INSURANCE COMPANY OF NORTH
AMERICA; CITY GENERAL INSURANCE
COMPANY; CONTINENTAL CASUALTY
COMPANY; THE DOMINION INSURANCE
COMPANY, LIMITED; DRAKE
INSURANCE COMPANY, LIMITED;
EDINBURGH INSURANCE COMPANY,
LIMITED; EMPLOYERS INSURANCE
COMPANY OF WAUSAU; THE EXCESS
INSURANCE COMPANY, LIMITED;
EXCESS INSURANCE COMPANY OF
AMERICA; FIDELIDADE INSURANCE
COMPANY OF LISBON; GIBBON (N.M.)
GROUP;

97-2-29050-3SEA
NO.

SUMMONS

SUMMONS - 1

0001

GORDON MURRAY TILDEN
1325 Fourth Avenue, Suite 1800
Seattle, Washington 98101
(206) 467-6477